

EXHIBIT G

DAVID SANTANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES C. KISTNER,

Plaintiff,

- vs - Civil Action No.
18-cv-00402

THE CITY OF BUFFALO,
c/o Corporation Counsel,
BYRON LOCKWOOD, individually and in
his capacity as Police Commissioner
of the Buffalo Police Department,
DANIEL DERENDA, individually and in his
capacity as Police Commissioner of the
Buffalo Police Department,
LAUREN McDERMOTT, individually and
in her capacity as a Buffalo Police Officer,
JENNY VELEZ, individually and in her
capacity as a Buffalo Police Officer,
KARL SCHULZ, individually and in his
capacity as a Buffalo Police Officer,
KYLE MORIARTY, individually and in his
capacity as a Buffalo Police Officer,
DAVID T. SANTANA, individually and in his
capacity as a Buffalo Police Officer,
JOHN DOE(S), individually and in his/their
capacity as a Buffalo Police Officer(s),
Defendants.

1 Examination before trial of **DAVID**
2 **SANTANA**, Defendant, taken pursuant to the Federal
3 Rules of Civil Procedure, in the offices of JACK W.
4 HUNT & ASSOCIATES, 1120 Liberty Building, Buffalo,
5 New York, on September 8, 2020, commencing at
6 10:13 a.m., before RICHARD B. WHALEN, CM, Notary
7 Public.

8 APPEARANCES: RUPP BAASE
9 PFALZGRAF & CUNNINGHAM, LLC,
10 By CHAD DAVENPORT, ESQ.,
11 1600 Liberty Building,
12 Buffalo, New York 14202,
13 (716) 854-3400,
14 davenport@ruppbaase.com,
15 Appearing for the Plaintiff.

16 TIMOTHY A. BALL, ESQ.,
17 Corporation Counsel,
18 By MAEVE E. HUGGINS, ESQ.,
19 Assistant Corporation Counsel,
20 1137 City Hall,
21 Buffalo, New York 14202,
22 (716) 851-4334,
23 mhuggins@city-buffalo.com,
Appearing for the Defendants.

PRESENT: JAMES C. KISTNER

10:13:14 18

10:13:14 19 **THE COURT REPORTER:** Read and sign,

10:13:16 20 Ms. Huggins?

10:13:17 21 **MS. HUGGINS:** Yes, please.

10:13:17 22

10:13:17 23

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10:13:36 1 **D A V I D S A N T A N A**, 633 East Ferry, Buffalo,
10:13:42 2 New York 14211, after being duly called and sworn,
10:13:42 3 testified as follows:

10:13:42 4

5 **EXAMINATION BY MR. DAVENPORT:**

6

10:13:48 7 **Q.** Good morning, Mr. Santana. As I'm sure
10:13:51 8 that you are aware, we are here to discuss an
10:13:53 9 incident that occurred on January 1st of 2017.
10:13:57 10 Have you ever given sworn deposition testimony
10:13:59 11 before?

10:14:00 12 **A.** Yes.

10:14:00 13 **Q.** Was that a in a civil or criminal
10:14:03 14 context?

10:14:07 15 **A.** For this?

10:14:09 16 **MS. HUGGINS:** He's asking if it was in the
10:14:10 17 context of civil lawsuit or if it was in criminal
10:14:14 18 court.

10:14:14 19 **THE WITNESS:** Civil. Well, I'm assuming --
10:14:16 20 it's just for this. That's the only one I've done,
10:14:19 21 so.

10:14:19 22 **BY MR. DAVENPORT:**

10:14:20 23 **Q.** Okay. Who took that deposition

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10:14:21 1 testimony?

10:14:22 2 **A.** Was that the one we did last time when

10:14:24 3 I was --

10:14:26 4 **MS. HUGGINS:** Are you asking the attorney

10:14:28 5 who asked -- who took the deposition?

10:14:31 6 **MR. DAVENPORT:** Yeah.

10:14:32 7 **BY MR. DAVENPORT:**

10:14:33 8 **Q.** So for this civil lawsuit, who was the

10:14:34 9 attorney that took the deposition testimony that

10:14:37 10 you appeared for?

10:14:39 11 **MS. HUGGINS:** I think you guys are both

10:14:41 12 confused about what you're asking about. He's

10:14:44 13 asking have you ever testified in a deposition

10:14:46 14 before.

10:14:46 15 **THE WITNESS:** Oh, I thought -- I assumed the

10:14:48 16 last time that we did it was for this, but.

10:14:50 17 **MS. HUGGINS:** No, not this case.

10:14:51 18 **THE WITNESS:** No, no.

10:14:52 19 **BY MR. DAVENPORT:**

10:14:53 20 **Q.** Okay. Was that recently that you gave

10:14:58 21 deposition testimony then?

10:14:59 22 **A.** The last time when I was at city hall.

10:15:02 23 **Q.** When was that?

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10:15:04 1 **MS. HUGGINS:** If you -- I can't answer the
10:15:06 2 questions for you --

10:15:06 3 **THE WITNESS:** Yeah.

10:15:06 4 **MS. HUGGINS:** -- so if you don't remember --

10:15:08 5 **THE WITNESS:** I don't recall.

10:15:09 6 **MS. HUGGINS:** Yeah.

10:15:10 7 **BY MR. DAVENPORT:**

10:15:10 8 **Q.** Okay. So I'm just going to go over a
10:15:13 9 couple of ground rules for deposition testimony,
10:15:15 10 the first one being that I'm going to ask you to
10:15:20 11 give all verbal responses. Don't shake your head
10:15:21 12 or nod your head for responses to any of the
10:15:23 13 questions.

10:15:24 14 The other thing is, you know, I'm going to
10:15:26 15 ask that you answer the questions to the best of
10:15:30 16 your ability without conferring with your attorney.

10:15:31 17 This is a deposition of you and I want your
10:15:33 18 testimony. So whatever answer you can give, and "I
10:15:37 19 don't recall" is an acceptable answer. Please give
10:15:40 20 me this answer without conferring with your
10:15:43 21 attorney beforehand.

10:15:44 22 If at any time you need to take a break,
10:15:46 23 just let ME know, I'm more than happy to accommodate.

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10:15:51 1 And we'll try to get this done as quickly as
10:15:53 2 possible so that way, we can get you out of here
10:15:56 3 and we can all get on with our days.

10:15:59 4 So the prior deposition testimony that you
10:16:01 5 gave, was that -- that was in the context of a
10:16:04 6 civil lawsuit, correct?

10:16:05 7 **A.** Yes.

10:16:05 8 **Q.** Okay. Now, was that within the past
10:16:10 9 year?

10:16:10 10 **A.** Yes.

10:16:11 11 **Q.** Okay. And that took place at city
10:16:13 12 hall?

10:16:13 13 **A.** Yes.

10:16:13 14 **Q.** Okay. Were you named as a defendant in
10:16:16 15 that lawsuit?

10:16:16 16 **A.** Yes.

10:16:17 17 **Q.** What stage is that case at right now?

10:16:23 18 **A.** I don't know.

10:16:24 19 **Q.** Okay. When did that incident take
10:16:28 20 place for that lawsuit?

10:16:29 21 **A.** January 1st of 2017.

10:16:33 22 **MS. HUGGINS:** Wait. He's not talking about
10:16:35 23 this lawsuit.

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10:16:36 1 **THE WITNESS:** Oh, when I gave my --

10:16:39 2 **MS. HUGGINS:** He's asking about -- maybe
10:16:41 3 rephrase your question.

10:16:42 4 **MR. DAVENPORT:** Sure.

10:16:42 5 **BY MR. DAVENPORT:**

10:16:44 6 **Q.** So for the other lawsuit that you gave
10:16:46 7 deposition testimony in, when did that incident
10:16:48 8 take place for that lawsuit?

10:16:50 9 **A.** I don't recall.

10:16:51 10 **Q.** Okay. Was it in 2017?

10:16:54 11 **A.** No.

10:16:55 12 **Q.** Okay. Was it after 2017?

10:16:58 13 **A.** Yes.

10:16:58 14 **Q.** Okay. Do you know who the attorney was
10:17:04 15 that took the deposition testimony?

10:17:05 16 **A.** No, I don't recall.

10:17:06 17 **Q.** Do you know what law office he was
10:17:08 18 affiliated with?

10:17:09 19 **A.** No.

10:17:10 20 **Q.** What's your highest level of education,
10:17:13 21 Mr. Santana?

10:17:14 22 **A.** Associate's degree.

10:17:15 23 **Q.** And where did you study for that

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10:17:17 1 associate's degree?

10:17:18 2 **A.** Online at American Intercontinental
10:17:24 3 University.

10:17:27 4 **Q.** When did you graduate?

10:17:31 5 **A.** I don't recall the dates.

10:17:33 6 **Q.** Do you remember roughly what year it
10:17:36 7 was?

10:17:37 8 **A.** No, I don't recall the dates. I don't
10:17:40 9 recall the year.

10:17:40 10 **Q.** Okay. Was it 2005 to 2010?

10:17:45 11 **A.** If I was going to give a date, it would
10:17:48 12 be before 2012.

10:17:50 13 **Q.** Okay. Why do you say that is before
10:17:52 14 2012?

10:17:53 15 **A.** Because I needed to have a degree in
10:17:55 16 order to become an officer at that time.

10:17:56 17 **Q.** Okay. When did you become an officer?

10:17:59 18 **A.** January 13th, 2012.

10:18:02 19 **Q.** Okay. Now, before you became an
10:18:08 20 officer, were you employed?

10:18:09 21 **A.** I was.

10:18:10 22 **Q.** Where were you employed?

10:18:12 23 **A.** HSBC Mortgage Corporation.

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10:18:14 1 Q. And what kind of work did you do that?

10:18:16 2 A. Post-closing, I reviewed mortgages
10:18:19 3 after closing.

10:18:20 4 Q. Okay. How long did you work at HSBC
10:18:25 5 for?

10:18:25 6 A. About five years.

10:18:28 7 Q. Was that a job that was right after
10:18:30 8 high school?

10:18:31 9 A. No.

10:18:32 10 Q. Did you work somewhere before HSBC?

10:18:37 11 A. I was in the military.

10:18:38 12 Q. Okay. How long were you in the
10:18:39 13 military for?

10:18:40 14 A. I did the reserves for 11 years. Prior
10:18:43 15 to HSBC, I was in Iraq for a year, a year and three
10:18:48 16 months.

10:18:48 17 Q. Okay. Do you remember what year you
10:18:50 18 were in Iraq?

10:18:51 19 A. 2004 to 2005.

10:18:55 20 Q. Okay. And then you remained in the
10:18:59 21 reserves from 2005 afterwards?

10:19:01 22 A. Yes.

10:19:02 23 Q. Okay. When were you no longer a part

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10:19:05 1 of the reserves? Do you remember what year?

10:19:07 2 **A.** I don't remember what year I left.

10:19:10 3 **Q.** Okay. Was it 11 years after 2005?

10:19:15 4 **MS. HUGGINS:** Form.

10:19:16 5 **THE WITNESS:** No. No, because I joined
10:19:19 6 before that. I can't recall what years.

10:19:23 7 **BY MR. DAVENPORT:**

10:19:24 8 **Q.** Okay. How many years were you in the
10:19:26 9 reserves before you were deployed to Iraq?

10:19:28 10 **A.** Two years.

10:19:29 11 **Q.** And were you honorably discharged?

10:19:36 12 **A.** I was.

10:19:37 13 **Q.** So when you -- the year that you became
10:19:42 14 part of the Buffalo Police Department was in 2012?

10:19:45 15 **A.** That's right.

10:19:46 16 **Q.** Okay. And it was January 13th?

10:19:47 17 **A.** Yes.

10:19:48 18 **Q.** Okay. Did you have to take part in any
10:19:51 19 training before?

10:19:52 20 **A.** No.

10:19:54 21 **Q.** Okay. Did you participate in the
10:19:57 22 Buffalo Police Academy before?

10:20:00 23 **A.** Before I was assigned or when I was

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10:20:02 1 sworn in?

10:20:03 2 Q. Before January 13th of 2012.

10:20:05 3 A. Yes.

10:20:07 4 Q. Okay. And how long were you in the

10:20:08 5 Buffalo Police Academy for?

10:20:10 6 A. Six months.

10:20:12 7 Q. Do you remember what six months you

10:20:16 8 entered the Buffalo Police Academy and

10:20:19 9 participated?

10:20:19 10 A. No, I do not.

10:20:20 11 Q. Okay. Do you remember what year?

10:20:23 12 A. 2012.

10:20:26 13 Q. So when did you -- how long were you in

10:20:31 14 the Buffalo Police Academy before January 13th of

10:20:35 15 2012?

10:20:36 16 A. No, actually, let me rephrase that. I
10:20:41 17 was sworn in on January 13th, 2012, and I don't
10:20:46 18 know what time I went to the academy shortly after.

10:20:49 19 Q. Okay.

10:20:50 20 A. The six months from that date, but like
10:20:52 21 I said, I can't recall times and dates.

10:20:55 22 Q. Okay. So it was six months after you
10:20:57 23 were sworn in?

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10:20:59 1 **A.** Yes.

10:20:59 2 **Q.** Okay. Do you remember what year you
10:21:06 3 completed your training with the Buffalo Police
10:21:08 4 Academy?

10:21:09 5 **A.** 2012.

10:21:09 6 **Q.** Okay. Now, did you take any training
10:21:24 7 with the Buffalo Police Academy before 2012?

10:21:28 8 **A.** No.

10:21:29 9 **Q.** Okay.

10:21:40 10 **MR. DAVENPORT:** Can I have this marked as --
10:21:42 11 I believe we're up to Exhibit 35.

12 (Discussion off the record.)

13 **The following was marked for Identification:**

14 **EXH. 35** **Buffalo Police Academy**
15 **training records, three**
16 **pages**

10:23:10 17 **BY MR. DAVENPORT:**

10:23:11 18 **Q.** So Mr. Santana, I'm going to hand to
10:23:13 19 you what's been marked as Exhibit 35. Do you
10:23:16 20 recognize this document?

10:23:17 21 **A.** I do.

10:23:18 22 **Q.** And what do you recognize it to be?

10:23:19 23 **A.** A Buffalo Police Academy training

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10:23:22 1 record.

10:23:24 2 Q. Now, do you see in the first column
10:23:26 3 where it says active shooter training in
10:23:29 4 February 8th of 2008?

10:23:31 5 A. I do see that.

10:23:32 6 Q. Do you believe that to be correct?

10:23:33 7 A. No, I believe that to be false.

10:23:36 8 Q. Okay. And why do you believe that to
10:23:37 9 be false?

10:23:38 10 A. Because I wasn't in the police
10:23:40 11 department in 2008.

10:23:40 12 Q. Okay. Do you know when you participated
10:23:42 13 in the active shooter training?

10:23:46 14 A. On this document in front of my face
10:23:49 15 right here, it says May 27th of 2015 on the first
10:23:57 16 page and at the bottom.

10:23:58 17 Q. Was that the first time that you took
10:24:00 18 active shooter training?

10:24:02 19 A. Yes, it is, according to this document
10:24:04 20 here.

10:24:05 21 Q. Okay. But you do see in the first
10:24:08 22 column where it says active shooter training in
10:24:10 23 2008, correct?

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10:24:11 1 **A.** I do see that.

10:24:12 2 **Q.** Okay. Does the Buffalo Police Academy
10:24:15 3 ever use training that you may have taken in the
10:24:17 4 military as part of its training courses?

10:24:20 5 **A.** No.

10:24:20 6 **Q.** Okay. So when it's written that you
10:24:27 7 took active shooter training in 2008, would that be
10:24:32 8 a concern that you would bring up to a supervisor
10:24:34 9 or somebody with the Buffalo Police Department to
10:24:38 10 have them take that training off of your record?

10:24:40 11 **MS. HUGGINS:** Form.

10:24:42 12 **THE WITNESS:** I'm not concerned in regards
10:24:44 13 to this because I don't see this documentation,
10:24:46 14 this paper that often.

10:24:48 15 **BY MR. DAVENPORT:**

10:24:49 16 **Q.** How often do you see that documentation?

10:24:50 17 **A.** This is actually the first time I've
10:24:52 18 seen it.

10:24:52 19 **Q.** Okay. Are officers required to keep up
10:24:58 20 to date with their training?

10:24:59 21 **A.** Yes.

10:25:00 22 **Q.** And who is responsible for making sure
10:25:02 23 that officers keep up with their training?

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10:25:05 1 A. The training academy.

10:25:07 2 Q. And who runs the training academy?

10:25:08 3 A. I do not know.

10:25:09 4 Q. Is it the City of Buffalo?

10:25:11 5 A. The City of Buffalo does, that's
10:25:12 6 correct.

10:25:13 7 Q. Okay. Is there a specific department
10:25:19 8 that's in charge of making sure that officers are
10:25:23 9 up to date on their training?

10:25:25 10 A. The Buffalo City Police Department,
10:25:27 11 yes.

10:25:27 12 Q. Is there a certain department within
10:25:29 13 the Buffalo Police Department?

10:25:30 14 A. The training academy.

10:25:31 15 Q. Okay. So the training academy is a
10:25:34 16 department of the Buffalo Police Department?

10:25:36 17 A. Yes, it's within the Buffalo Police
10:25:38 18 Department.

10:25:38 19 Q. Okay. Now, based on what you see in
10:25:47 20 this document, and I'll give you a second to review
10:25:49 21 it, is there any training courses that you do not
10:25:52 22 see in here that you did take between the time of
10:25:57 23 we'll say June 6th, 2012, to January 21st of 2019?

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10:26:02 1 A. No, everything that I took would be on
10:26:05 2 this form.

10:26:06 3 Q. After you take a training course, are
10:26:08 4 you required to fill out any documentation showing
10:26:10 5 that you took this -- such a course?

10:26:13 6 A. No.

10:26:15 7 Q. Is there a sign-in sheet for the
10:26:17 8 training courses?

10:26:18 9 A. There is.

10:26:19 10 Q. Okay. Do all the officers sign that
10:26:21 11 sign-in sheet?

10:26:23 12 A. I do. I don't know about the others,
10:26:25 13 but yes.

10:26:27 14 Q. And is there a sign-out portion as
10:26:30 15 well?

10:26:30 16 A. No, just the sign-in sheet.

10:26:34 17 Q. Is attendance kept during these
10:26:37 18 training courses?

10:26:38 19 A. Yes.

10:26:39 20 Q. Is there some sort of roll call or
10:26:41 21 anything like that?

10:26:42 22 A. Yes.

10:26:43 23 Q. Okay. So in addition to the sign-in

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10:26:47 1 sheet, there's also a roll call that takes place
10:26:49 2 for each of the training courses?

10:26:53 3 **A.** Yes.

10:26:53 4 **Q.** Now, after your six-month course with
10:27:06 5 the Buffalo training academy in 2012, did you
10:27:09 6 become a field training officer after that?

10:27:11 7 **A.** No, I did not.

10:27:12 8 **Q.** And why was that?

10:27:14 9 **A.** Because at that time, I believe you had
10:27:17 10 to have three years, but I'm not certain on how
10:27:20 11 much time you had in patrol in order to become a
10:27:23 12 field training officer.

10:27:24 13 **Q.** Okay. So you started off as a patrol
10:27:27 14 officer then?

10:27:28 15 **A.** That's correct.

10:27:28 16 **Q.** Do you know what year you started as a
10:27:32 17 patrol officer?

10:27:32 18 **A.** 2012.

10:27:36 19 **Q.** Now, how long were you a patrol officer
10:27:38 20 for?

10:27:40 21 **A.** What year are you talking about? In
10:27:42 22 2012 or are you talking about now?

10:27:45 23 **Q.** So how many years from 2012 forward

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10:27:48 1 were you a field -- a patrol officer for?

10:27:52 2 **A.** Eight years, eight years and some
10:27:54 3 months.

10:27:55 4 **Q.** So you're a patrol officer today then?

10:27:58 5 **A.** Yes.

10:27:59 6 **Q.** Have you applied to be a field training
10:28:08 7 officer?

10:28:08 8 **A.** I did.

10:28:10 9 **Q.** And were you denied that position?

10:28:13 10 **A.** No, I wasn't.

10:28:15 11 **Q.** Are you a field training officer today?

10:28:17 12 **A.** I am.

10:28:18 13 **Q.** So you're a patrol officer and also a
10:28:20 14 field training officer?

10:28:22 15 **A.** Yes.

10:28:23 16 **Q.** How long have you been a field training
10:28:25 17 officer for?

10:28:25 18 **A.** I can't tell you the times, but a
10:28:27 19 couple of years.

10:28:29 20 **Q.** Okay. Was it approximately three years
10:28:34 21 after you became a patrol officer for the first
10:28:37 22 time?

10:28:37 23 **A.** No, I don't recall.

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10:28:42 1 Q. Was it in the last three years that you
10:28:46 2 became a field training officer?

10:28:48 3 A. Possible, but I don't recall the dates.

10:28:51 4 Q. Were you a field training officer on
10:28:54 5 January 1st of 2017?

10:28:55 6 A. I don't -- I don't recall.

10:28:57 7 Q. Okay. But you were a patrol officer on
10:29:00 8 January 1st of 2017?

10:29:01 9 A. That's correct.

10:29:02 10 Q. Okay. Did you have a partner at the
10:29:04 11 time?

10:29:05 12 A. Yes.

10:29:05 13 Q. Okay. Who was your partner?

10:29:07 14 A. Joseph Petronella.

10:29:24 15 Q. Was Joseph working on January 1st of
10:29:26 16 2017?

10:29:27 17 A. Yes, he was.

10:29:29 18 Q. Okay. Was he your partner, your
10:29:35 19 assigned partner that day?

10:29:36 20 A. No, he wasn't.

10:29:37 21 Q. Did you have an assigned partner that
10:29:40 22 day?

10:29:40 23 A. No, I don't.

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10:29:42 1 Q. Why on January 1st of 2017 did you not
10:29:45 2 have an assigned partner?

10:29:47 3 A. We don't get assigned partners. It's
10:29:49 4 usually if someone wants to ride with you, they can
10:29:52 5 ride with you, but it's not assigned.

10:29:54 6 Q. Okay. Would you say that on the
10:29:58 7 majority of your shifts, is Joseph riding around
10:30:02 8 with you?

10:30:03 9 A. I can't recall that, the period of
10:30:05 10 time. It could have been many people, but no.

10:30:09 11 Q. Is Joseph your partner today?

10:30:11 12 A. No, he isn't.

10:30:13 13 Q. Do you have a new partner?

10:30:14 14 A. Yes, I do.

10:30:15 15 Q. And who is that?

10:30:17 16 A. Officer Margaret Alvarado.

10:30:35 17 Q. When did Officer Margaret become your
10:30:38 18 partner?

10:30:38 19 A. She became my partner back in January.
10:30:41 20 I can't tell you the date in January of 2020.

10:30:45 21 Q. Was Joseph your partner for -- before
10:30:51 22 that time?

10:30:51 23 A. Not before that because he transferred

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10:30:53 1 to a different district years ago.

10:30:56 2 Q. What district did he transfer to?

10:30:57 3 A. Bravo District.

10:31:03 4 Q. Was Joseph your first partner with the
10:31:06 5 Buffalo Police Department?

10:31:07 6 A. That, I can't recall.

10:31:09 7 Q. Besides Joseph and Margaret, who else
10:31:13 8 have been your partners?

10:31:15 9 A. You have to specify whether or not on a
10:31:17 10 regular basis or -- because anybody within the
10:31:20 11 department could jump in the car and ride with me
10:31:22 12 for that patrol day.

10:31:24 13 Q. What about regular partners that you've
10:31:26 14 had?

10:31:27 15 A. Nope.

10:31:27 16 Q. Just Joseph and Margaret?

10:31:29 17 A. Yes.

10:31:29 18 Q. Okay.

10:31:29 19 (Discussion off the record.)

10:31:29 20 **BY MR. DAVENPORT:**

10:31:59 21 Q. Now, do you remember January 1st of
10:32:01 22 2017?

10:32:01 23 A. No, I do not.

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10:32:04 1 Q. Do you remember responding to a call at
10:32:07 2 33 Schmarbeck?
10:32:08 3 A. No, I do not.
10:32:09 4 Q. Do you remember any places or any
10:32:15 5 incidents on January 1st of 2017?
10:32:17 6 A. No, I do not.
10:32:31 7 Q. So I'm gong to show you what's been
10:32:32 8 marked as Exhibit 16. All right. You see on the
10:32:42 9 fourth line down where it says that Joseph
10:32:46 10 Petronella was an officer?
10:32:48 11 A. I do.
10:32:48 12 Q. Okay. And I'm sorry, do you recognize
10:32:51 13 this document?
10:32:52 14 A. Yes, I do.
10:32:53 15 Q. And what do you recognize it to be?
10:32:54 16 A. It's the shift summary sheet.
10:32:56 17 Q. Okay. And it is the shift summary
10:32:59 18 sheet for what date?
10:33:01 19 A. To this document, it is January 1st of
10:33:05 20 2017.
10:33:05 21 Q. Okay. And what shift is it for?
10:33:07 22 A. The second shift.
10:33:09 23 Q. Were you working this shift?

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10:33:11 1 A. Yes, I was.

10:33:12 2 Q. And you said at this time Joseph
10:33:15 3 Petronella was your partner, correct, on
10:33:17 4 January 1st of 2017?

10:33:18 5 A. That is correct.

10:33:19 6 Q. Okay. And you see where Joseph
10:33:23 7 Petronella is listed as the fourth officer down?

10:33:26 8 A. I do.

10:33:27 9 Q. So that would indicate that he was
10:33:29 10 working on this day?

10:33:30 11 A. It does.

10:33:32 12 Q. But Joseph Petronella was not working
10:33:36 13 as your partner on this date, correct?

10:33:38 14 A. He was riding with me, so he was
10:33:41 15 working with me.

10:33:42 16 Q. Okay. Was he riding with you for the
10:33:46 17 entire day?

10:33:46 18 A. Yes.

10:33:48 19 Q. Do you remember if he was riding with
10:33:54 20 you for the incident at 33 Schmarbeck?

10:33:57 21 A. Well, I don't remember that incident
10:33:58 22 and whether or not he was riding with me, but
10:34:00 23 according to this documentation here with the car

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10:34:02 1 number listed as 625, he was with me.

10:34:05 2 Q. Is that the car that you normally
10:34:07 3 drive, is car six 25?

10:34:10 4 A. At that time, yes.

10:34:11 5 Q. And what kind of car is that?

10:34:12 6 A. A Dodge Charger.

10:34:15 7 Q. Were there other types of patrol
10:34:18 8 vehicles that were being used at that time?

10:34:20 9 A. Yes.

10:34:20 10 Q. Okay. And what kind of car was that?

10:34:22 11 A. A Chevy Tahoe. You have some Crown
10:34:26 12 Vices, Victorias. The old patrol vehicles were
10:34:29 13 still in service at that time.

10:34:31 14 Q. How do officers determine what type of
10:34:34 15 vehicle they're driving?

10:34:35 16 A. Generally it's the most senior person
10:34:38 17 within this shift has the first pick of the
10:34:41 18 vehicles.

10:34:41 19 Q. Okay. Now, looking at Exhibit 16, who
10:34:45 20 was the most senior person at that time?

10:34:48 21 A. Let's see here. According to this
10:34:51 22 document right here that I have in front of me,
10:34:54 23 it's officer Ronnie Daniels.

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10:34:57 1 Q. Okay. Now, is that just something that
10:35:01 2 you know off the top of your head or is that
10:35:03 3 something from the document that you are able to
10:35:05 4 determine?

10:35:06 5 A. Our identifying numbers, our DID
10:35:11 6 numbers, his number starts with a 000217, he must
10:35:16 7 have gotten that DID way before, like a long time
10:35:19 8 ago.

10:35:20 9 Q. Does Ronnie Daniels, does he still work
10:35:23 10 in C District?

10:35:24 11 A. No, he does not.

10:35:26 12 Q. Does he work in another district?

10:35:28 13 A. He does.

10:35:28 14 Q. What district does he work in?

10:35:30 15 A. Traffic.

10:35:35 16 Q. Is that still with the City of Buffalo?

10:35:37 17 A. That is.

10:35:42 18 Q. What selection did you have on
10:35:45 19 January 1st of 2017 for the vehicles on this date?

10:35:50 20 MS. HUGGINS: Form.

10:35:51 21 THE WITNESS: On this sheet here, 625.

10:35:55 22 BY MR. DAVENPORT:

10:35:56 23 Q. In terms of order for officers who are

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10:36:00 1 picking their vehicles, do you know where you
10:36:02 2 ranked?

10:36:02 3 **A.** At this time? At this point in time, I
10:36:04 4 think -- I believe I was right in the middle of the
10:36:07 5 pack.

10:36:11 6 **Q.** Do you know where Karl Schultz, Jenny
10:36:18 7 Velez, Laura McDermott, and Kyle Moriarity would
10:36:24 8 have ranked for their car selection?

10:36:26 9 **A.** Well, this right here, it's, like I
10:36:29 10 said earlier, their DID numbers. That's usually
10:36:33 11 the most senior guy would get the vehicle.

10:36:35 12 And it's sometimes not the case because they
10:36:38 13 prefer driving the Tahoe over the Charger. I don't
10:36:41 14 know. It's their preference, but it's generally
10:36:43 15 the most senior guy.

10:36:45 16 But who do you want to know who I have more
10:36:49 17 time on this paper and I can tell you if I did?

10:36:49 18 **Q.** Okay. What about Mr. Moriarity?

10:36:51 19 **A.** I do have more time than he does.

10:36:54 20 **Q.** Okay. What about Ms. McDermott?

10:36:56 21 **A.** I do have more time than she does.

10:36:58 22 **Q.** What about Ms. Velez?

10:37:00 23 **A.** I do have more time than she does.

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10:37:03 1 Q. And what about Mr. Schultz?

10:37:04 2 A. He has more time than me.

10:37:06 3 Q. So it's the lower DID number

10:37:09 4 references --

10:37:09 5 A. Usually the lower DID number is the
10:37:11 6 most senior officer. That's to my understanding.

10:37:24 7 Q. Was there any reason that you a
10:37:26 8 preference for the Charger?

10:37:28 9 A. Well, it's all-wheel drive, perfect in
10:37:32 10 the winter.

10:37:34 11 Q. And that's not a feature that's with
10:37:36 12 the Chevy Tahoe?

10:37:38 13 A. No, I believe the Chevy Tahoes were
10:37:41 14 front-wheel drives.

10:37:42 15 Q. And what about the Crown Vic, does that
10:37:45 16 have all-wheel drive or front-wheel drive?

10:37:47 17 A. I believe they have front-wheel drive.
10:37:49 18 I don't think they have all-wheel drive, but I'm
10:37:51 19 not sure in regards to that.

10:37:59 20 Q. Are any of the cars more comfortable
10:38:01 21 than the other?

10:38:02 22 A. It's on your preference, so I don't
10:38:04 23 know. It depends on who is going to drive it.

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10:38:06 1 Q. What about for you?

10:38:07 2 A. For me, I just love the fact that it's
10:38:09 3 all-wheel drive.

10:38:10 4 Q. Okay. So during the winter, you
10:38:14 5 typically pick a Dodge Charger if it's available?

10:38:17 6 A. Winter, summer, spring, fall I pick the
10:38:21 7 Dodge Charger.

10:38:21 8 Q. Okay. Is that a car that you still
10:38:24 9 select today?

10:38:24 10 A. It is.

10:38:25 11 Q. Now, who drives typically between you
10:38:39 12 and your partner, Joseph?

10:38:41 13 A. I do.

10:38:43 14 Q. Okay. Is that just a preference
10:38:45 15 between the officers?

10:38:46 16 A. I prefer to drive.

10:38:48 17 Q. Okay. Is that a preference that you
10:38:53 18 have in your personal life, too?

10:38:55 19 A. It is.

10:39:03 20 Q. How long would you say on an average
10:39:05 21 shift you are out on patrol?

10:39:09 22 A. 10 hours.

10:39:10 23 Q. Okay. And when does your shift

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10:39:12 1 typically start?

10:39:14 2 A. 06 in the morning.

10:39:16 3 Q. Okay. And when does it go until?

10:39:18 4 A. 1600, 4:00 o'clock p.m.

10:39:21 5 Q. Okay. So you're out patrolling the
10:39:24 6 entire time then?

10:39:25 7 A. Yes.

10:39:29 8 Q. Do you ever get time to fill out
10:39:32 9 paperwork?

10:39:32 10 A. Within the duty of that time, you have
10:39:35 11 to fill out paperwork whether it's inside the
10:39:38 12 vehicle or inside the station house.

10:39:39 13 Q. Do you typically fill out the paperwork
10:39:42 14 inside of the vehicle then?

10:39:42 15 A. Yes, I do.

10:39:49 16 Q. Between you and Joseph, how do you
10:39:52 17 determine who fills out the paperwork at a certain
10:39:55 18 incident?

10:39:55 19 A. Generally it's my rule of thumb if I'm
10:39:58 20 driving, the person who is the passenger will be
10:40:00 21 filling the paperwork out. But if there's some
10:40:03 22 instances where there's a lot of people working,
10:40:09 23 then we split it.

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10:40:10 1 **MS. HUGGINS:** Form. Just to clarify, you've
10:40:11 2 asked the present tense. You're referring to in
10:40:15 3 January of 2017?

10:40:18 4 **MR. DAVENPORT:** Yeah, in January of 2017.

10:40:21 5 **BY MR. DAVENPORT:**

10:40:28 6 **Q.** On January 1st of 2017, do you recall
10:40:30 7 filling out any paperwork?

10:40:31 8 **A.** No, I do not recall.

10:40:33 9 **Q.** Do you remember generally any incidents
10:40:38 10 that you responded to on January 1st?

10:40:41 11 **A.** No, I do not recall.

10:40:44 12 **Q.** Okay.

10:41:19 13 **MR. DAVENPORT:** Could I have this marked as
10:41:20 14 Exhibit 36?

10:41:20 15 **The following was marked for Identification:**

16 **EXH. 36** **Buffalo Police Complaint**
17 **Summary Report, six pages**

10:42:08 18 **MR. DAVENPORT:** Thank you.

10:42:09 19 **BY MR. DAVENPORT:**

10:42:12 20 **Q.** Mr. Santana, do you recall this
10:42:15 21 document or do you recognize this document?

10:42:16 22 **A.** I do recognize this document.

10:42:18 23 **Q.** What do you recognize it to be?

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10:42:20 1 **A.** It's the complaint summary report.

10:42:24 2 **Q.** And on what date was this complaint
10:42:26 3 summary report -- what date does it represent?

10:42:29 4 **A.** January 1st of 2017.

10:42:33 5 **Q.** Okay. Does the complaint summary
10:42:38 6 report tell you on the first page an incident that
10:42:42 7 you assisted with?

10:42:45 8 **A.** It does.

10:42:46 9 **Q.** Okay. And what is the location of that
10:42:50 10 incident?

10:42:50 11 **A.** Sycamore Street at Loepere Street.

10:42:54 12 **Q.** Now, who were the officers that
10:42:59 13 responded to that call with you?

10:43:00 14 **A.** On this first page, Officer Petronella,
10:43:06 15 Officer Zak, Officer Burgess, Officer Schultz,
10:43:10 16 Officer Moriarity, and myself.

10:43:16 17 **Q.** And what type of a call was that?

10:43:18 18 **A.** This is a hit-and-run, property damage
10:43:20 19 only.

10:43:21 20 **Q.** Okay. What does that mean, for
10:43:23 21 property damage only?

10:43:25 22 **A.** That is when a vehicle or an object
10:43:28 23 strikes a fixed object usually.

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10:43:32 1 Q. Okay. Does it represent a single-car
10:43:35 2 accident then?

10:43:36 3 A. Yes, that's involving a car.

10:43:40 4 Q. And then the other property in this
10:43:45 5 instance, would it be another car?

10:43:46 6 A. Yeah, it could another car, it could be
10:43:48 7 a house, but a hit-and-run is when someone hits
10:43:52 8 something and then flees the scene.

10:43:54 9 Q. Right. But I guess in this instance
10:43:57 10 when it says property damage only, that's referring
10:44:01 11 to there not being another driver who was injured?

10:44:04 12 A. That's correct.

10:44:05 13 Q. Okay. Now, how long does it say that
10:44:12 14 this call lasted for?

10:44:16 15 A. This call according to this sheet came
10:44:18 16 out at 0608. And this call was cleared at 0732.

10:44:29 17 Q. Now, is there any way to determine from
10:44:31 18 this complaint summary report who the initial
10:44:33 19 officers were that responded to this call?

10:44:35 20 A. Yes.

10:44:35 21 Q. Okay. And how would one determine
10:44:38 22 that?

10:44:38 23 A. Usually, dispatch will assign a call to

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10:44:42 1 an officer and they become the primary officer.

10:44:46 2 They're the officer in charge of that call.

10:44:48 3 And afterwards, it's generally dispatch will
10:44:52 4 assign other cars to go with that officer or other
10:44:55 5 officers will assign themselves to go to that call.

10:45:02 6 Q. Now, looking at this complaint summary
10:45:04 7 report, who is the officer who was assigned as the
10:45:08 8 primary officer?

10:45:09 9 A. Charlie 222.

10:45:14 10 Q. Now, Charlie 222, that refers to the
10:45:17 11 call sign?

10:45:17 12 A. Yes, that's your call sign.

10:45:19 13 Q. Okay. So keeping with this document,
10:45:24 14 Exhibit 16, who was Charlie 222?

10:45:28 15 A. Officer Petronella.

10:45:32 16 Q. Now, was there a reason why he was
10:45:34 17 assigned as the primary officer on this call?

10:45:38 18 A. This is a C2. That's a sector within
10:45:41 19 Charlie District. So being the two sector, it's a
10:45:44 20 two sector car.

10:45:45 21 So generally if a call comes out within a
10:45:48 22 certain sector within the district, the person who
10:45:50 23 is assigned to that sector will get that call.

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10:45:53 1 Q. Okay. So there's individual sectors
10:45:55 2 within C District?

10:45:57 3 A. There is.

10:45:57 4 Q. And how many sectors are there?

10:45:59 5 A. Four sectors.

10:46:00 6 Q. Okay. How do officers determine which
10:46:05 7 sector they're within C District?

10:46:08 8 A. They do not determine that. It's up to
10:46:10 9 their lieutenant to determine.

10:46:14 10 Q. Is the sector that you're assigned to
10:46:15 11 on any given day, is that fluid?

10:46:17 12 A. No, it's usually if you're assigned a
10:46:19 13 sector, that's your sector.

10:46:21 14 Q. Okay. And that's your sector for an
10:46:23 15 entire day?

10:46:23 16 A. No, that's your sector for the entire
10:46:27 17 time that you're working within that platoon.

10:46:31 18 Q. Understood. So if Joseph was working
10:46:38 19 in the second sector, it's safe to assume that you
10:46:42 20 also were in the second sector as well?

10:46:43 21 MS. HUGGINS: Form.

10:46:44 22 THE WITNESS: Yes. This form, yes.

10:46:45 23 According to this document here, I am dispatched at

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10:46:49 1 this call.

10:46:50 2 **BY MR. DAVENPORT:**

10:46:50 3 **Q.** Okay. Do you know when you were
10:46:54 4 assigned to second sector?

10:46:56 5 **A.** I was not assigned to second sector.

10:47:01 6 **Q.** So for this call, you responded to
10:47:03 7 second sector?

10:47:04 8 **A.** Yes. You could generally cover other
10:47:06 9 officers within different sectors. You don't have
10:47:09 10 to be assigned and only stay within that sector.

10:47:13 11 **Q.** Okay. What would you say the
10:47:17 12 percentage of your calls are that you responded to
10:47:20 13 within second sector as opposed to other four
10:47:22 14 sectors?

10:47:23 15 **MS. HUGGINS:** Form.

10:47:23 16 **THE WITNESS:** I can't tell you. It's
10:47:24 17 different every day. There's no exact number.
10:47:28 18 It's totally different.

10:47:29 19 **BY MR. DAVENPORT:**

10:47:29 20 **Q.** Would you say on a general basis the
10:47:31 21 majority of your calls are responded to in the
10:47:33 22 second sector?

10:47:33 23 **A.** On that day in particular or are you

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10:47:36 1 talking about in general?

10:47:37 2 Q. On January 1st of 2017, around that
10:47:40 3 time --

10:47:41 4 A. I don't recall.

10:47:42 5 Q. Okay. Do you know what sector you were
10:47:46 6 assigned to today?

10:47:47 7 A. This day?

10:47:50 8 Q. Today, present day.

10:47:51 9 A. All right. This day, I'm assigned to
10:47:53 10 the three sector.

10:47:54 11 Q. Okay. Do you know when you were
10:47:56 12 assigned to the three sector?

10:47:57 13 A. I don't recall.

10:47:58 14 Q. Was it within the last year?

10:48:00 15 A. No, it was not.

10:48:01 16 Q. Do you know roughly how many years
10:48:05 17 you've been assigned to the three sector?

10:48:06 18 A. It's years, but I can't give you an
10:48:08 19 exact amount because I don't recall.

10:48:10 20 Q. Do you know if it is roughly three
10:48:13 21 years?

10:48:13 22 A. Yes, it is.

10:48:15 23 Q. Were you assigned to three sector

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10:48:18 1 around January 1st of 2017?

10:48:20 2 **A.** Yes, I was.

10:48:21 3 **Q.** But you don't know if you were assigned
10:48:23 4 to three sector or a different sector on
10:48:25 5 January 1st of 2017?

10:48:26 6 **A.** Well, according to this documentation,
10:48:28 7 the shift summary report, I'm assigned to that
10:48:30 8 sector. I am listed as Charlie 232.

10:48:36 9 **Q.** Okay. So how do you know that you were
10:48:39 10 assigned to three sector based on Charlie 232?

10:48:42 11 **A.** How do I know I was in what, like how
10:48:46 12 did I get assigned or I just -- when I first came
10:48:48 13 into this platoon many years ago, and I can't give
10:48:50 14 you the exact date, I was assigned to that sector.

10:48:53 15 **Q.** Okay. But I guess you implied that by
10:48:58 16 looking at your call sign, Charlie 232, you were
10:49:01 17 able to determine that you were assigned to three
10:49:02 18 sector on January 1st of 2017?

10:49:04 19 **A.** That's correct.

10:49:04 20 **Q.** And what is it about that call sign
10:49:08 21 that indicates that you were assigned to three
10:49:12 22 sector?

10:49:12 23 **A.** 32 -- 232, the three within that,

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10:49:15 1 that's the sector.

10:49:16 2 Q. Okay. So it's the middle number that
10:49:19 3 tells you what sector you're assigned to?

10:49:22 4 A. That's correct.

10:49:24 5 Q. Now, looking at Exhibit 16, does it
10:49:28 6 appear that Mr. Schultz and Mr. Moriarity were also
10:49:33 7 assigned to the three sector on this date?

10:49:35 8 A. That is correct.

10:49:35 9 Q. Okay. But Ms. McDermott and Ms. Velez
10:49:40 10 were assigned to the four sector?

10:49:42 11 A. That is correct.

10:49:43 12 Q. Okay. Now, the call that you responded
10:49:52 13 to at Sycamore Street, that was in the two sector,
10:49:57 14 correct?

10:49:57 15 A. That is correct.

10:49:57 16 Q. Okay. And Mr. Petronella was assigned
10:50:04 17 as the primary officer, correct?

10:50:06 18 A. That's correct.

10:50:07 19 Q. So I'm just looking at Exhibit 16 again
10:50:12 20 and I see that Mr. Petronella was assigned to the
10:50:14 21 two sector on January 1st of 2017 but you were
10:50:18 22 assigned to the three sector. Do you see that?

10:50:19 23 A. That is correct. I do see that.

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10:50:21 1 Q. Okay. So how is it that you know you
10:50:26 2 both were partners but you were being assigned to
10:50:28 3 different sectors?

10:50:30 4 A. Like I said earlier, it doesn't matter
10:50:32 5 what sector you're in within the whole Charlie
10:50:35 6 District. If you want to ride with someone in the
10:50:37 7 four sector, that's fine as long as you could cover
10:50:40 8 the area.

10:50:41 9 But like I said, we were assigned to our
10:50:44 10 sectors, but in regards to riding together, it
10:50:48 11 doesn't have to be just a three sector riding in
10:50:51 12 one car, it could be someone from another sector
10:50:54 13 who could ride with you.

10:50:55 14 Q. Okay. So it's expected that you will
10:50:58 15 respond to all calls that are necessary in the
10:51:00 16 three sector and Mr. Petronella will respond to all
10:51:03 17 calls that are necessary in the two sector?

10:51:05 18 A. Yes.

10:51:05 19 Q. Okay. Do you know roughly the area
10:51:07 20 that each of those sectors covers?

10:51:09 21 A. Yes, I do, but I can't give you like
10:51:13 22 the miles or how big it is. But yeah, I have a
10:51:17 23 sense.

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10:51:18 1 Q. Okay. Do you have markers that
10:51:23 2 determine where the two sector starts and where it
10:51:26 3 ends?

10:51:26 4 A. Yes, we do have maps in regards to the
10:51:29 5 boundaries of each sector.

10:51:33 6 Q. Okay. And is that something that's
10:51:35 7 maintained by the Buffalo Police Department?

10:51:37 8 A. Yes, it is.

10:51:39 9 Q. Is that something that's still
10:51:40 10 maintained today?

10:51:41 11 A. That, I do not know.

10:51:43 12 Q. Okay. Do you know if those sectors,
10:51:48 13 the guidelines have changed since January 1st of
10:51:51 14 2017?

10:51:51 15 A. That, I do not know.

10:52:13 16 Q. Do you know where in second -- in
10:52:20 17 second sector Sycamore Street would be? Is it
10:52:22 18 closer to the border or is it more towards the
10:52:25 19 middle?

10:52:25 20 A. Sycamore, it runs into my sector, the
10:52:30 21 sector three. It also runs into four sector
10:52:33 22 because it's a long street. So it encompasses
10:52:37 23 different sectors.

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10:52:38 1 Q. Okay. Now, one of the officers who
10:52:45 2 responded to Sycamore Street was Zakary Burgess?

10:52:50 3 A. That is correct.

10:52:51 4 Q. Okay. And according to Exhibit 16, he
10:52:54 5 would have been in the first sector?

10:52:57 6 A. According to Exhibit 16, he would have
10:53:00 7 been on the three sector.

10:53:08 8 Q. Is his call sign 213?

10:53:12 9 A. His call sign is 230 along with Officer
10:53:17 10 Schultz.

10:53:17 11 Q. Oh, no, I'm sorry. Mr. Burgess, Zakary
10:53:22 12 Burgess.

10:53:22 13 A. Mr. Burgess, it is Charlie 232 -- 213,
10:53:26 14 sorry.

10:53:27 15 Q. So Mr. Burgess would be in the first
10:53:29 16 sector?

10:53:30 17 A. That is correct.

10:53:31 18 Q. Now, do you know on any given date how
10:53:39 19 many centers roughly are assigned to each sector
10:53:44 20 for?

10:53:45 21 A. I can't tell you the exact amount
10:53:46 22 because it changes from time to time depending on
10:53:49 23 the environment and on like the wave of crime, but

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10:53:52 1 I can't give you that specific number.

10:53:54 2 Q. Okay. Does it appear on January 1st,
10:53:56 3 2017, based on Exhibit 16 that two officers were
10:54:03 4 assigned to each of the four districts?

10:54:06 5 A. Just give me one second here. The
10:54:09 6 three sector, you have three -- three officers
10:54:13 7 within that sector. Other than that, everyone
10:54:18 8 else -- every other sector has two officers.

10:54:21 9 Q. Now, do you see for Anthony McHugh his
10:54:24 10 call sign is 254 on Exhibit 16?

10:54:27 11 A. I do see that.

10:54:28 12 Q. But there's no fifth sector within
10:54:31 13 C District, correct?

10:54:32 14 A. No, the five is usually for
10:54:33 15 supervisors.

10:54:34 16 Q. Okay. Do you see that the remaining
10:54:39 17 five officers after Anthony McHugh on Exhibit 16,
10:54:43 18 they have a call sign with an eight in the middle?

10:54:48 19 A. I do see that.

10:54:49 20 Q. Okay. What does that eight represent?

10:54:50 21 A. Usually the eight is -- it's generally
10:54:55 22 a car that could go within Charlie District.
10:54:58 23 They're not assigned to a certain sector, but from

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10:55:01 1 viewing this document here -- well, seeing so many
10:55:05 2 eight officers assigned, this is the other day
10:55:08 3 shift that is training on this day, but they're
10:55:11 4 assigned the eight.

10:55:15 5 Q. Okay. Do you know why there were more
10:55:21 6 officers on this date?

10:55:22 7 A. Because there's one day that it
10:55:24 8 overlaps where both the day shifts from each side
10:55:28 9 works together on that one day.

10:55:29 10 Q. And that was on this day, January 1st,
10:55:32 11 2017?

10:55:32 12 A. Yes.

10:55:33 13 Q. Okay.

10:55:33 14 A. It's just from me viewing this
10:55:35 15 documentation right here with the amount of eight
10:55:38 16 sectors or eight cars, that's what I'm deducing in
10:55:42 17 regards to this.

10:55:43 18 Q. Okay. Now, listed on Exhibit 16, who
10:55:48 19 were the officers who were assigned to your day
10:55:51 20 shift on January 1st of 2017?

10:55:53 21 A. Do you want me to say the names or do
10:55:58 22 you want me to give the number of officers?

10:56:00 23 Q. If you could give me the names, that

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10:56:03 1 would be best.

10:56:03 2 **A.** All right. According to this document,
10:56:05 3 Officer Velez, Officer McDermott, myself, Officer
10:56:12 4 Lucia Schultz, Officer Karl Schultz with Kyle
10:56:15 5 Moriarity, Officer Petronella, Officer Gorski,
10:56:22 6 Officer Burgess, and Officer Zak.

10:56:28 7 **Q.** Okay. And for that last one, his name
10:56:31 8 is Thomas G. Zak. That's his full name?

10:56:34 9 **A.** It is according to this document here.

10:56:36 10 **Q.** Okay. So for Kevin Quinn, Erin
10:56:43 11 Heidinger, Ronnie Daniels, William Johnson, and
10:56:44 12 Clarence Sampson, those are officers who worked on
10:56:47 13 a different day shift typically?

10:56:49 14 **A.** Yes.

10:56:49 15 **Q.** Now, why was it that the other day
10:56:55 16 shift was not assigned a sector?

10:56:58 17 **A.** Because generally their training
10:57:01 18 starts -- it works usually the one training -- it's
10:57:04 19 a training day.

10:57:04 20 So one shift would be on the patrol. The
10:57:07 21 other shift will have a training. I don't know. I
10:57:10 22 can't tell you about this particular day here, but
10:57:14 23 it switches on and off.

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10:57:17 1 But we always have that overlap where the
10:57:20 2 one day both the day shifts -- because we work
10:57:24 3 four, we're off four, we work four, we're off
10:57:29 4 three. So eventually we can get all the days off,
10:57:32 5 but I believe it's every two weeks we have the
10:57:34 6 training day together.

10:57:34 7 Q. And when you say training, are they
10:57:36 8 participating in the type of training that is
10:57:38 9 listed on Exhibit 35?

10:57:41 10 A. Quite possibly, but I can't answer to
10:57:43 11 that.

10:57:46 12 Q. But generally it's that type of
10:57:48 13 training, there's no other forms of training that
10:57:50 14 would take place?

10:57:51 15 A. Generally, yes.

10:57:53 16 Q. Do you know if on January 1st of 2017
10:58:03 17 those officers who were assigned an eight in their
10:58:06 18 call sign, if they were participating in any
10:58:12 19 training?

10:58:12 20 A. I don't recall.

10:58:15 21 Q. Now, if training doesn't -- is it
10:58:18 22 typical that training doesn't last the entire day?

10:58:22 23 A. Generally if you're not training,

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10:58:24 1 you're out on patrol, but you're assigned a number
10:58:28 2 so you don't have to answer calls and dispatch
10:58:32 3 won't give any call to you, but you are on the
10:58:35 4 streets.

10:58:36 5 Q. Okay.

10:58:36 6 A. But it varies.

10:58:38 7 Q. Okay. Would those officers who are
10:58:45 8 designated a training number typically not be
10:58:48 9 labeled as the primary officer on a call?

10:58:51 10 A. That's correct.

10:58:52 11 Q. Okay. They're more so there for
10:58:56 12 backup?

10:58:56 13 A. That's correct.

10:58:56 14 Q. Okay. So I'm going to point you to
10:59:41 15 page 3.

10:59:42 16 A. Of?

10:59:43 17 Q. Of, I'm sorry, Exhibit 36. Now, do you
10:59:58 18 see that there's an incident that is listed at
11:00:02 19 Liddell Street?

11:00:03 20 A. On page 3, 129 Liddell Street.

11:00:06 21 Q. Okay. What type of a call was that?

11:00:09 22 A. An irrational person.

11:00:11 23 Q. What was the outcome of that call?

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11:00:14 1 A. The outcome of this call, and this is
11:00:20 2 me gathering this information from this very
11:00:22 3 document, it is a -- P1321 is a mental health exam,
11:00:35 4 941.

11:00:37 5 Q. Do you know who the primary officer was
11:00:40 6 for this call?

11:00:41 7 A. That would be me.

11:00:43 8 Q. Okay. Were you the only officer that
11:00:51 9 responded to that call?

11:00:52 10 A. According to this document I have in
11:00:55 11 front of me, one, two, and it was just myself and
11:00:59 12 Charlie 221.

11:01:02 13 Q. Okay. So Charlie 221, turning to
11:01:09 14 Exhibit 16, that would be Pamela?

11:01:12 15 A. That's correct.

11:01:14 16 Q. Not Officer Joseph?

11:01:16 17 A. No, not on this call log right here.

11:01:20 18 Q. Okay. Now, I'm going to point you back
11:01:24 19 to page 3 on Exhibit 36. Do you see the incident
11:01:30 20 that happened at Brownell Street?

11:01:34 21 A. If you're referring to Brownell Street
11:01:37 22 at Ashley Street, the traffic stop, then yes.

11:01:40 23 Q. Okay. And Joseph Petronella was the

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11:01:44 1 other officer who was with you for that incident?

11:01:46 2 A. Yes.

11:01:47 3 Q. Okay. And that incident was cleared at
11:01:49 4 9:50?

11:01:51 5 A. Yes, it is.

11:01:53 6 Q. Okay. And the incident was reported
11:01:57 7 first at 7:18 a.m.?

11:01:58 8 A. That's right.

11:01:59 9 Q. Okay. What type of a traffic stop was
11:02:02 10 that?

11:02:02 11 A. I don't recall the details of that
11:02:04 12 traffic stop.

11:02:05 13 Q. Okay. Do you know why that traffic
11:02:08 14 stop would have lasted for almost two-and-a-half
11:02:11 15 hours?

11:02:11 16 A. I don't recall.

11:02:15 17 Q. Is it typical for traffic stops to last
11:02:18 18 that long?

11:02:21 19 A. According to this documentation, there
11:02:23 20 was one arrest. So if you see right there, Charlie
11:02:27 21 232 has one arrest, and you also see CB, which
11:02:31 22 means central booking, and underneath that the lab,
11:02:34 23 so there must have been narcotics involved, so yes.

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11:02:38 1 Q. Okay. All right. So turning back to
11:03:03 2 the incident at Liddell Street.

11:03:06 3 A. Okay.

11:03:07 4 Q. You see that your partner, Joseph, was
11:03:11 5 no longer with you for that call?

11:03:13 6 A. Yes, I do see that.

11:03:15 7 Q. Okay. And instead, Pamela was the
11:03:18 8 other officer who responded to the call with you?

11:03:20 9 A. Yes.

11:03:20 10 Q. All right. Do you know if Pamela was
11:03:24 11 in the same car as you?

11:03:26 12 A. She was not.

11:03:27 13 Q. And is that something that you recall
11:03:29 14 or is that something that you can tell from the
11:03:31 15 document?

11:03:32 16 A. Well, it's from the document here and
11:03:34 17 from Exhibit 16. She was assigned her own vehicle
11:03:39 18 and she was driving her own vehicle, vehicle 530.

11:03:46 19 Q. Okay. Do you know if you requested
11:03:53 20 backup or did dispatch request the backup?

11:04:02 21 A. Dispatch according to this
11:04:05 22 documentation, dispatch Charlie 221.

11:04:10 23 Q. So that would indicate that Pamela

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11:04:14 1 assigned herself to this call?

11:04:16 2 **A.** That would indicate whether -- it could
11:04:19 3 be Pamela assigning herself to this call or it
11:04:21 4 could be dispatch assigning her to assist me upon
11:04:25 5 this call.

11:04:25 6 **Q.** Okay. But you're not able to determine
11:04:27 7 that from the document, correct?

11:04:28 8 **A.** I can't recall.

11:04:28 9 **Q.** Okay. Do you remember this incident at
11:04:34 10 Liddell Street?

11:04:35 11 **A.** No, I do not.

11:04:36 12 **Q.** Okay. By this document, are you able
11:04:41 13 to determine any of the details of this call?

11:04:48 14 **A.** Yes. There are details that was put
11:04:51 15 forth from the dispatch. What would you like to
11:04:56 16 know from this call?

11:04:57 17 **Q.** Was the paranoid, irrational person a
11:05:02 18 27-year-old?

11:05:03 19 **A.** According to this document, yes.

11:05:04 20 **Q.** C female right before the line that
11:05:10 21 says that it's a 27-year-old, does that refer to
11:05:12 22 the call being made by a female?

11:05:15 23 **A.** It says right here C female, so yes, I

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11:05:20 1 would -- I would assume that it's talking about
11:05:23 2 female.

11:05:23 3 Q. Okay. Does it also refer to the call
11:05:26 4 being made by a female?

11:05:29 5 A. No, it does not.

11:05:30 6 Q. What the does the C stand for?

11:05:32 7 A. C as in see somebody, S-E-E. That's --
11:05:37 8 that's usually what it is.

11:05:38 9 Q. Okay. So it's a shorthand for see?

11:05:41 10 A. Yes.

11:05:41 11 Q. Okay. So this would also indicate that
11:05:46 12 the 27-year-old was the son of somebody present at
11:05:49 13 the -- at Liddell Street?

11:05:51 14 A. According to this documentation, yes.
11:05:54 15 And according to what I'm getting from this very
11:05:56 16 document, yes.

11:05:57 17 Q. Okay. And the son threatened to shoot
11:06:02 18 this woman?

11:06:04 19 A. Yes, according to this document, which
11:06:06 20 states threatening to shoot her.

11:06:09 21 Q. Do you remember -- do you recall if you
11:06:13 22 were there present when those threats were being
11:06:16 23 made?

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11:06:16 1 A. I do not recall being there while he
11:06:21 2 was making threats.

11:06:24 3 Q. What time was this call cleared at?

11:06:32 4 A. This call was cleared at 11:03:20.

11:06:38 5 Q. Okay. And in reviewing this document,
11:06:41 6 does it indicate to you that both you and Pamela
11:06:44 7 drove this individual to ECMC for a 941
11:06:48 8 examination?

11:06:48 9 A. Yes, according to this documentation in
11:06:50 10 front of me, yes, it does state that.

11:06:52 11 Q. Okay. Do you recall staying at ECMC
11:06:57 12 while this individual was being evaluated?

11:06:59 13 A. I do not recall staying here, but from
11:07:01 14 this documentation right here, I was there.

11:07:05 15 Q. And you were there for the 941 mental
11:07:09 16 health examination?

11:07:09 17 A. That is -- that is correct.

11:07:13 18 Q. How long do those typically take?

11:07:15 19 A. I can't give you the exact number. It
11:07:17 20 could be -- well, the old ECMC before they made the
11:07:27 21 new mental health, it could take -- the short is 20
11:07:31 22 minutes. The longest I've been there, six-seven
11:07:33 23 hours.

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11:07:34 1 **Q.** Is that just for the 941 mental health
11:07:36 2 examination?

11:07:37 3 **A.** Yes, but it varies. There's no
11:07:39 4 specific time frame that you're inside ECMC. It's
11:07:41 5 depending on how busy that hospital is and whatnot.

11:07:46 6 **Q.** Okay. So if you're not staying at ECMC
11:07:51 7 and waiting, how long roughly would you say the
11:07:54 8 actual 941 examination itself takes?

11:07:57 9 **MS. HUGGINS:** Form.

11:07:58 10 **THE WITNESS:** I can't give you -- I can't
11:08:00 11 give you that exact amount. That's something that
11:08:02 12 you would have to touch base with the ECMC
11:08:04 13 personnel.

11:08:06 14 **BY MR. DAVENPORT:**

11:08:06 15 **Q.** Okay. Do you typically stay there at
11:08:08 16 ECMC for the actual 941 examination that takes
11:08:11 17 place?

11:08:11 18 **A.** Generally if it's an arrest, you have
11:08:13 19 to stay there until they're cleared through ECMC.
11:08:17 20 So in regards to a time frame, I can't give you a
11:08:22 21 time frame because it's different.

11:08:23 22 **Q.** Now, when you say stay through, what --
11:08:28 23 at what point are you -- is the officer no longer

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11:08:31 1 needed at ECMC?

11:08:32 2 **A.** When they cleared that individual who
11:08:34 3 is 941 from ECMC.

11:08:37 4 **Q.** Okay. And what does clearing an
11:08:39 5 individual mean?

11:08:40 6 **A.** Well, whatever the doctors do at ECMC.
11:08:43 7 I can't tell you what they do.

11:08:45 8 **Q.** Okay. Could clearing be allowing a
11:08:47 9 person to leave?

11:08:49 10 **A.** From their facility?

11:08:50 11 **Q.** Yes.

11:08:51 12 **A.** But like I said if a person is under
11:08:53 13 arrest, they're under your jurisdiction, they're
11:08:56 14 under you. So from then, from there, you have to
11:08:59 15 take them to central booking to get booked and
11:09:01 16 processed.

11:09:02 17 **Q.** Okay. Could clearing also represent
11:09:14 18 somebody remains at ECMC to be observed?

11:09:19 19 **A.** You --

11:09:19 20 **MS. HUGGINS:** Form. You can answer.

11:09:22 21 **THE WITNESS:** It's in regards to -- let's
11:09:24 22 say if a person was not under arrest and you have
11:09:29 23 them on 941 paperwork.

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11:09:31 1 You take them to ECMC to get evaluated but
11:09:34 2 you're no longer required to stay there. There's
11:09:36 3 no need for you, the officer, to stay there.

11:09:39 4 **BY MR. DAVENPORT:**

11:09:39 5 **Q.** But if somebody is arrested, you are
11:09:41 6 required to stay there?

11:09:42 7 **A.** Yes.

11:09:42 8 **Q.** And that officer who brings an
11:09:53 9 individual who is arrested, that officer is
11:09:55 10 required to stay there even through the 941
11:09:58 11 examination?

11:09:59 12 **A.** Yes, but there's many circumstances
11:10:01 13 where it could be beyond their tour of duty, so
11:10:06 14 they will assign another officer to stay with this
11:10:08 15 individual who is being given the 941.

11:10:30 16 **Q.** In reviewing Exhibit 36, is there any
11:10:34 17 way to determine what the outcome was for the 941
11:10:39 18 mental health examination?

11:10:40 19 **A.** In regards to the call that we were
11:10:42 20 just discussing?

11:10:43 21 **Q.** Correct.

11:10:44 22 **A.** The Liddell call?

11:10:47 23 **Q.** Correct.

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11:10:48 1 **A.** The 1:29? According to this document
11:10:50 2 here, it's the mental health exam and that's what
11:10:54 3 this document states.

11:10:55 4 **Q.** Okay. But there's no way to determine
11:10:57 5 what the outcome was of the 941 call?

11:11:00 6 **A.** No, I can't determine that. You'll
11:11:02 7 have to take it up at headquarters.

11:11:04 8 **Q.** Okay.

11:11:06 9 **MS. HUGGINS:** Form. Do you mean the outcome
11:11:08 10 of the exam? Is that when you're asking?

11:11:11 11 **MR. DAVENPORT:** Outcome of the 941 mental
11:11:13 12 health exam.

11:11:13 13 **THE WITNESS:** Right.

11:11:13 14 **MS. HUGGINS:** Can you answer that?

11:11:14 15 **THE WITNESS:** Yeah. There's no way for me
11:11:16 16 to determine what was the outcome of it, no.

11:11:18 17 **BY MR. DAVENPORT:**

11:11:19 18 **Q.** Okay. Would the fact that there's
11:11:24 19 nothing on this call about central booking indicate
11:11:28 20 that that person remained at ECMC?

11:11:30 21 **A.** Yes, that is correct.

11:11:33 22 **Q.** Okay. Now, you've been a patrol
11:11:38 23 officer for eight years, correct?

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11:11:40 1 A. That's correct.

11:11:40 2 Q. Approximately how many 941 forms and
11:11:46 3 941 examinations have you participated in or been a
11:11:49 4 part of?

11:11:49 5 A. You want to know an exact number of how
11:11:53 6 many I've done?

11:11:53 7 Q. It doesn't have to be exact, it could
11:11:55 8 be an approximation.

11:11:56 9 A. I can't really give you that number.
11:11:58 10 It's been -- it's been a lot. I can say over 100.

11:12:03 11 Q. Do you and other officers receive
11:12:12 12 training on 941 mental health examinations?

11:12:14 13 A. Yes, we do.

11:12:15 14 Q. And what type of training do you
11:12:17 15 receive?

11:12:18 16 A. Mental health law and training given by
11:12:21 17 the academy.

11:12:24 18 Q. What specifically with mental health
11:12:27 19 law do they train you on?

11:12:30 20 A. The 941.

11:12:31 21 Q. Now, do they just review the statute
11:12:33 22 941 with you?

11:12:34 23 A. I can't recall the basis of the

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11:12:36 1 training that I received because it's been a while
11:12:39 2 now, but it's generally the whole process in
11:12:41 3 regards to the 941. It's from like the transport,
11:12:46 4 the paperwork that you have to fill out.

11:12:48 5 Q. Okay. Do you know off the top of your
11:12:52 6 head approximately when you would have taken the
11:12:54 7 941 training?

11:12:55 8 A. No, I do not. Do you want me to grab
11:13:04 9 Exhibit 35?

11:13:05 10 Q. Yes, please, because my next question
11:13:07 11 is going to be based on that document. Now in
11:13:16 12 reviewing Exhibit 35, would you say that's -- that
11:13:20 13 this training took place on June 20th of 2016?

11:13:26 14 A. Let's see, June 20th. That is correct.

11:13:38 15 Q. Would there be any other training that
11:13:42 16 is listed on page 2 of Exhibit 35 that would
11:13:48 17 represent 941 training?

11:13:59 18 A. No.

11:14:00 19 Q. Okay. What about page 3 of Exhibit 35?

11:14:06 20 A. Yes.

11:14:07 21 Q. Okay. And what training would that be?

11:14:09 22 A. 2018, mental health. That occurred on
11:14:13 23 March 12th of 2018.

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11:14:16 1 Q. And the number of hours that you
11:14:17 2 participated in that training was three hours?

11:14:19 3 A. That is correct.

11:14:20 4 Q. Okay. And the training that you
11:14:23 5 participated in on June 28th of 2016 was also three
11:14:27 6 hours?

11:14:30 7 A. Give me a second. Yes, it is.

11:14:32 8 Q. Turning to the first page of Exhibit 35,
11:14:35 9 are there any other training courses that would
11:14:38 10 represent training on the 941 process?

11:14:43 11 A. No.

11:14:48 12 Q. So it's safe to say that according to
11:14:50 13 the documentation that we have been provided from
11:14:52 14 the city, you had participated in six hours of
11:14:55 15 training on the 941 process?

11:14:57 16 A. Yes, it is.

11:14:58 17 Q. Okay. Do you know if since January
11:15:03 18 21st of 2019, you have taken any training on mental
11:15:06 19 health or the 941 process?

11:15:09 20 A. No, I can't recall.

11:15:12 21 Q. Do you have any reason to believe that
11:15:14 22 you did take some sort of training?

11:15:17 23 A. Well, if I don't recall, I don't

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11:15:19 1 remember.

11:15:29 2 Q. So specifically during your training
11:15:31 3 for the 941 mental health examination, when you
11:15:34 4 refer to the process, can you describe generally
11:15:37 5 what that process is that they train you on?

11:15:39 6 A. I don't recall the process of what they
11:15:41 7 train you on. I'm just giving you a general idea
11:15:43 8 of what the training might have consisted of, but
11:15:46 9 in regards to the exact training, I don't recall
11:15:48 10 that.

11:15:48 11 Q. What about to the best of your
11:15:52 12 recollection for the 941 processes that you had
11:15:55 13 been involved with, what is typically the process?

11:15:57 14 A. On a 941, usually when the call comes
11:16:01 15 out, the person making that call will give us
11:16:03 16 something in regards to the behavior of the
11:16:07 17 individual.

11:16:08 18 Once we show up on scene, we interview that
11:16:11 19 person, generally ask them whether or not they feel
11:16:16 20 like harming themselves or others or -- and then
11:16:20 21 from there, we will determine whether or not they
11:16:24 22 need to be transported to ECMC.

11:16:29 23 Q. Now, is each step that you just

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11:16:31 1 described, is that a mandatory part of the process?

11:16:34 2 **A.** That is part of the process, yes,
11:16:36 3 that's correct.

11:16:37 4 **Q.** But is it a mandatory part of the
11:16:40 5 process?

11:16:40 6 **A.** Yes, because you have to determine what
11:16:41 7 their mental issues are and whether or not -- what
11:16:45 8 their mental health is at that point in time and
11:16:49 9 whether or not they pose a threat to themselves or
11:16:51 10 the family.

11:16:54 11 **Q.** Are those the two major questions that
11:16:56 12 you ask the person who would be subjected to the
11:16:59 13 941 is if they would harm themselves or harm their
11:17:02 14 families?

11:17:03 15 **A.** I do, yes.

11:17:04 16 **Q.** Are there any other questions that you
11:17:06 17 would ask?

11:17:06 18 **A.** Other questions would be what type of
11:17:09 19 medication they have been taking, if there's any
11:17:13 20 diagnosis that they have. All of this information
11:17:17 21 is needed to put on that 941 paperwork. It helps
11:17:23 22 ECMC in regards to getting that -- that individual
11:17:25 23 help.

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11:17:26 1 Q. All right. Have you ever filled out a
11:17:28 2 941 form before?

11:17:29 3 A. I have.

11:17:30 4 Q. Do you know if on January 1st of 2017
11:17:32 5 you filled out any 941 forms?

11:17:36 6 A. I'm going to look at Exhibit 36.

11:17:38 7 Q. Okay.

11:17:38 8 A. And I will let you know. We're talking
11:17:42 9 about earlier, the one that we have been
11:17:45 10 discussing, the 129 Liddell. It states the 941
11:17:49 11 exam has been completed on that.

11:17:52 12 I'm looking through the other call logs that
11:17:56 13 I have here and that was the only one that I filled
11:18:02 14 out that day.

11:18:03 15 Q. Okay. So, I'm sorry, can you tell from
11:18:08 16 the complaint summary report that you filled out a
11:18:10 17 941 form?

11:18:11 18 A. Yes.

11:18:11 19 Q. Okay. And what is it that you see on
11:18:15 20 the complaint summary report that tells you that
11:18:17 21 you filled out the 941 form?

11:18:19 22 A. Let me go back to that page. It says
11:18:24 23 disposition added, the P1321, which is the 941

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11:18:28 1 mental health exam.

11:18:30 2 Q. Okay. And that would tell you that
11:18:34 3 you, rather than the other officer, Pamela --

11:18:40 4 A. It would say that that form was
11:18:41 5 completed, but it doesn't say who completed that
11:18:43 6 form.

11:18:44 7 Q. Is there a requirement for who would be
11:18:47 8 required to fill out that form?

11:18:48 9 A. No requirement whatsoever.

11:18:50 10 Q. So it's not the primary officer that's
11:18:53 11 required to fill it out?

11:18:53 12 A. No. If the assisting officer wants to
11:18:56 13 complete it, it's up to them. It's usually
11:18:58 14 something that officers will discuss.

11:19:04 15 Q. So -- I'm sorry.

11:19:06 16 A. No, go ahead.

11:19:07 17 Q. I hate to keep making you go back to
11:19:11 18 it, but for Exhibit 36, the P1321, what does that
11:19:17 19 refer to?

11:19:17 20 A. That to my understanding is the
11:19:19 21 document number to that form. And that could be
11:19:23 22 like the way that the city identifies document
11:19:26 23 numbers or something like that. That's like the

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11:19:29 1 document number to that form.

11:19:31 2 Q. Okay. So the P1321 is the document
11:19:35 3 form -- document identifier from the city?

11:19:39 4 A. That's correct.

11:19:40 5 Q. Is the P1321 a separate document
11:19:46 6 besides the 941 form?

11:19:48 7 A. Yes. Well, that's that form but that's
11:19:50 8 the document number to that form. That's the
11:19:54 9 document number. The 941 is for the mental health
11:19:57 10 exam.

11:19:59 11 Q. Understood. Okay. Do officers
11:20:04 12 typically refer to the form that's filled out for a
11:20:07 13 941 examination as a 941 form or a P1321 form?

11:20:11 14 A. 941 form. And that's my understanding.
11:20:14 15 I don't know in regards to other officers.

11:20:16 16 Q. Okay. But you typically refer to it as
11:20:18 17 the --

11:20:19 18 A. As the 941.

11:20:20 19 Q. And the 941 one is the P1321 form?

11:20:23 20 A. That's correct.

11:20:25 21 Q. All right.

11:20:27 22 MS. HUGGINS: Give him a moment before you
11:20:29 23 say your answer because you guys are talking quite

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11:20:32 1 fast.

11:20:32 2 **THE WITNESS:** Oh, I'm sorry.

11:20:42 3 (Discussion off the record.)

11:20:42 4 **BY MR. DAVENPORT:**

11:20:43 5 **Q.** Now, where do officers typically ask a
11:20:47 6 person that would be subjected to the 941
11:20:50 7 examination if they've had thoughts about harming
11:20:52 8 themselves or others?

11:20:53 9 **A.** Where do officers ask?

11:20:55 10 **Q.** Is it at the scene or is it at ECMC?

11:20:58 11 **A.** It could be at the scene. It could be
11:21:00 12 at the scene and ECMC. It depends on the officers.
11:21:03 13 They could ask many times within the whole call in
11:21:07 14 itself.

11:21:07 15 **Q.** Is there a requirement that they would
11:21:08 16 have to ask about whether that person is thinking
11:21:11 17 about harming themselves or others at the scene?

11:21:15 18 **A.** There is no requirement whatsoever, but
11:21:17 19 generally if you're responding to a call, you want
11:21:19 20 to ask in regards to the whole situation.

11:21:22 21 So to my understanding, there's no
11:21:24 22 requirement, but the way I operate, yes, when I
11:21:28 23 first show up on the scene, I'm going to talk to

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11:21:30 1 the family and I'm going to talk to the individual
11:21:33 2 to get my understanding of the whole situation.

11:21:35 3 Q. Okay. Typically how long does the
11:21:39 4 questioning of the family and the individual last?

11:21:42 5 A. There's no specific time per se. It
11:21:48 6 could be minutes, but I can't give you a precise
11:21:52 7 number in regards to the questioning and how long
11:21:55 8 it takes.

11:21:56 9 Q. Has the 941 process to your knowledge
11:21:59 10 changed at all since January 1st of 2017?

11:22:03 11 A. No, it hasn't.

11:22:04 12 Q. Okay. So the training that was done in
11:22:09 13 2018, that was more of a refresher on what you
11:22:11 14 learned in 2016?

11:22:12 15 A. Yes. The only thing different that I
11:22:17 16 do in regards to a 941 is we used to do it on paper
11:22:22 17 form, but now it's through the computer, but it's
11:22:24 18 the same thing. That's the only difference.

11:22:29 19 Q. Was it on paper or on the computer in
11:22:33 20 2017?

11:22:34 21 A. It's on paper because the computer
11:22:40 22 version came out within a year -- like within the
11:22:42 23 year or so.

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11:22:44 1 Q. Okay. Have you been trained on the
11:22:48 2 computer version?

11:22:49 3 A. Yes.

11:22:50 4 Q. And when did you participate in that
11:22:53 5 training?

11:22:53 6 A. I don't recall the dates.

11:22:56 7 Q. But it was in -- within the last year?

11:22:58 8 A. Yes.

11:22:59 9 Q. Okay. Was that with the Buffalo
11:23:03 10 training academy?

11:23:05 11 A. That was with the Buffalo training
11:23:08 12 academy, that's correct.

11:23:09 13 Q. Okay. Now, turning back to Exhibit 36.

11:23:18 14 A. Okay.

11:23:20 15 Q. After the incident on Liddell Street
11:23:24 16 ended at 11:03, when was the next call that you
11:23:27 17 responded to according to the document?

11:23:29 18 A. According to this documentation here,
11:23:32 19 1305 is the next call.

11:23:34 20 Q. And that would represent 1:05 p.m.?

11:23:36 21 A. That is correct.

11:23:37 22 Q. Okay. So what are officers expected to
11:23:45 23 do during that downtime when they're not responding

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11:23:48 1 to a call?

11:23:49 2 **A.** It's different with each officer, but
11:23:52 3 if you're -- from my perspective, if you're not
11:23:55 4 assigned a call, you generally just drive around
11:23:58 5 your sector.

11:23:59 6 So it's either -- I'm just throwing some
11:24:04 7 examples out. If there's calls in other sectors,
11:24:07 8 you could see if they need any assistance, or if
11:24:10 9 you want to do a traffic stop, you could do that if
11:24:13 10 you see a traffic infraction. Generally, you're
11:24:16 11 within your sector and you're patrolling.

11:24:20 12 **Q.** Okay. Do you see how the next call
11:24:23 13 that you responded to at 1:05 p.m. on Bailey Avenue
11:24:27 14 was again without your partner, Joseph?

11:24:31 15 **A.** I do see that.

11:24:32 16 **Q.** Okay. Do you know why Joseph wasn't
11:24:35 17 out patrolling with you at that time?

11:24:37 18 **A.** I can't tell you why. He probably was
11:24:40 19 in the car and didn't assign himself to this call.
11:24:44 20 There's many possibilities. He could be at the
11:24:46 21 station house using the bathroom. I don't know
11:24:49 22 because I don't recall.

11:24:51 23 **Q.** Okay. But he also didn't respond to

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11:24:53 1 the call that was at Liddell Street, correct?

11:25:00 2 **A.** Let's go back to that. No. According
11:25:03 3 to this document, no.

11:25:04 4 **Q.** Okay. Now, according again to the
11:25:08 5 complaint summary report, the call that you
11:25:11 6 responded to on Bailey Avenue was call sign C232,
11:25:16 7 which refers to you, correct?

11:25:17 8 **A.** No, there's two Bailey Avenues. Which
11:25:19 9 one are you specifically talking about?

11:25:22 10 **Q.** 964 Bailey Avenue.

11:25:25 11 **A.** Okay. And you would like to know
11:25:26 12 whether or not I was the -- the two primary
11:25:29 13 officers?

11:25:29 14 **Q.** Call sign 232 refers to you, correct?

11:25:33 15 **A.** Yes, that is correct.

11:25:34 16 **Q.** Okay. And call sign 230 responds to
11:25:38 17 Karl Schultz and Karl Moriarity on January 1st of
11:25:41 18 2017?

11:25:42 19 **A.** That is correct.

11:25:43 20 **Q.** Do you see any other call signs that
11:25:45 21 were associated with the call at 1964 Bailey
11:25:48 22 Avenue?

11:25:48 23 **A.** No, I do not.

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11:25:49 1 Q. Okay. Do you see the next call that
11:25:55 2 was at 1773 Bailey Avenue?

11:25:57 3 A. I do.

11:25:58 4 Q. Okay. Who were the officers that
11:26:00 5 responded to that call?

11:26:01 6 A. Myself, Officer Schultz, and Officer
11:26:06 7 Moriarity.

11:26:08 8 Q. Now, the call signs that are associated
11:26:11 9 with this call are call sign 232 and call sign 230;
11:26:14 10 is that correct?

11:26:15 11 A. That is correct.

11:26:15 12 Q. Are there any other call signs that are
11:26:17 13 associated with this call?

11:26:18 14 A. No, there isn't.

11:26:19 15 Q. Okay. Do you see the next call that is
11:26:22 16 at 788 Fillmore Avenue?

11:26:24 17 A. I do.

11:26:25 18 Q. Who were the officers that responded to
11:26:27 19 that call?

11:26:27 20 A. Just myself.

11:26:28 21 Q. And it's just call sign 232?

11:26:32 22 A. That is correct.

11:26:33 23 Q. Okay. Do you see the next incident

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11:26:40 1 that occurred at 575 High Street?

11:26:43 2 A. I do.

11:26:43 3 Q. Okay. Who were the officers that
11:26:47 4 responded to that call?

11:26:48 5 A. So it's Charlie 232, which is myself.
11:26:53 6 Charlie 231, according to the shift summary report,
11:26:56 7 it is Officer Gorski. And that's it.

11:27:02 8 Q. Okay. And then the last call for the
11:27:06 9 day was 568 Doat Street?

11:27:08 10 A. That is correct.

11:27:09 11 Q. Okay. And who were the officers that
11:27:13 12 responded to that call?

11:27:13 13 A. Myself.

11:27:14 14 Q. Okay. Were there any other officers
11:27:17 15 who responded to that call?

11:27:18 16 A. I don't recall.

11:27:21 17 Q. So now would it be safe to assume from
11:27:24 18 this document that from 9:50 a.m. onward, Joseph,
11:27:30 19 your partner, was not with you for the rest of the
11:27:33 20 day?

11:27:33 21 MS. HUGGINS: Form. You can answer.

11:27:35 22 THE WITNESS: You're talking about in
11:27:37 23 regards to that Brownell and Ashley, from that

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11:27:39 1 call?

11:27:40 2 **BY MR. DAVENPORT:**

11:27:40 3 **Q.** Yep.

11:27:41 4 **A.** And if he was with me for the entire
11:27:43 5 day after that call?

11:27:44 6 **Q.** That's correct.

11:27:45 7 **A.** That, I can't recall.

11:27:47 8 **Q.** But based on this documentation, would
11:27:48 9 it be safe to assume that he was not with you for
11:27:51 10 the rest of the day?

11:27:51 11 **MS. HUGGINS:** Form. You can answer.

11:27:53 12 **THE WITNESS:** Based on this, yes.

11:27:54 13 **BY MR. DAVENPORT:**

11:27:55 14 **Q.** Okay. Would there be anything from
11:28:01 15 this document that would indicate that from 9:50
11:28:04 16 a.m. onward, your partner, Joseph, was with you at
11:28:06 17 any other part of the day?

11:28:08 18 **A.** No.

11:28:08 19 **Q.** Okay. Do you have any idea why Joseph
11:28:15 20 may have not been with you for the rest of the day?

11:28:18 21 **MS. HUGGINS:** Form.

11:28:18 22 **THE WITNESS:** Like I said, I don't recall
11:28:20 23 the whole entire day during that day, but if he was

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11:28:24 1 with me the entire day, he could have been, but he
11:28:27 2 is not required if I answer my sector calls to put
11:28:30 3 himself on my calls.

11:28:32 4 So from this documentation that you see here
11:28:35 5 where I'm the only one responding to that, I'm the
11:28:37 6 one who is taking that call.

11:28:39 7 He has the option whether or not he wants to
11:28:42 8 take it or not, so he could have been with me the
11:28:45 9 entire day. It's just from this documentation
11:28:47 10 here, you'll see me on certain calls by myself, but
11:28:51 11 in fact, he could have been with me.

11:28:52 12 Q. Okay. I think I understand what you're
11:28:55 13 saying. So for the Brownell and Ashley Street
11:29:01 14 traffic stop, that call ended with you and Joseph
11:29:07 15 going to central booking and the lab. Correct?

11:29:10 16 A. That is correct.

11:29:11 17 Q. Okay. How long would an officer be
11:29:15 18 expected to stay at the lab?

11:29:17 19 A. It also -- it's -- each -- each
11:29:21 20 situation is different. The lab takes until --
11:29:27 21 it's narcotics, it's firearms. So you could be
11:29:30 22 there minutes or you could be there over a
11:29:33 23 half-hour. But each -- situation is different, so

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11:29:37 1 I'm not sure.

11:29:38 2 Q. Okay. But you wouldn't expect to be at
11:29:41 3 the lab for longer than a half-hour?

11:29:44 4 A. Like I said earlier, each -- I mean,
11:29:47 5 it's possible that you could be there a lot longer,
11:29:49 6 but each situation is different, so I can't give
11:29:53 7 you the exact number.

11:29:54 8 Q. Have you ever gone to the narcotics lab
11:29:57 9 before?

11:29:57 10 A. I have.

11:29:58 11 Q. Okay. What's the longest that you've
11:30:00 12 ever stayed at the narcotics lab?

11:30:02 13 A. I can't tell you because I can't
11:30:04 14 recall.

11:30:04 15 Q. Was it longer than an hour?

11:30:06 16 A. I can't recall. Possibly, but I'm not
11:30:08 17 sure. I can't give you that exact number because
11:30:10 18 I've had so many narcotics arrests, so I can't tell
11:30:13 19 you.

11:30:13 20 Q. Okay. Ever longer than two hours?

11:30:17 21 A. I don't believe so, but I can't --
11:30:21 22 don't quote me on it.

11:30:22 23 Q. Sure. If you were able to give a rough

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11:30:25 1 estimate for how long you would stay in the
11:30:26 2 narcotics lab, what would that rough estimate be?

11:30:29 3 **A.** On average you're talking about? 20
11:30:35 4 minutes.

11:30:35 5 **Q.** Now, according to the complaint summary
11:30:39 6 report, it also says that there was a location
11:30:43 7 change to central booking. Do you see that?

11:30:46 8 **A.** Yes. Let me get to that page real
11:30:49 9 quick here. Yes, I do see that.

11:30:51 10 **Q.** And that would have taken place at 8:12
11:30:54 11 a.m.?

11:30:54 12 **A.** That's correct.

11:30:55 13 **Q.** Okay. And then the next location
11:30:57 14 change was at 9:25 a.m.?

11:30:59 15 **A.** Yes.

11:31:04 16 **Q.** So that would indicate to you that no
11:31:11 17 officers were at central booking after 9:25 a.m.?

11:31:16 18 **A.** There could be officers at central
11:31:18 19 booking because this is the City of Buffalo and
11:31:21 20 there's many districts, so I can't tell you how
11:31:24 21 many officers were at central booking after that
11:31:26 22 time.

11:31:27 23 **Q.** What about for you and your partner,

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11:31:29 1 Joseph?

11:31:30 2 **MS. HUGGINS:** Form.

11:31:31 3 **THE WITNESS:** According to this, I am at
11:31:33 4 central booking because I put myself out on central
11:31:35 5 booking.

11:31:36 6 **BY MR. DAVENPORT:**

11:31:37 7 **Q.** But the fact that there was a location
11:31:38 8 change for your call sign at 9:25 a.m. would infer
11:31:42 9 that you were no longer at central booking at --
11:31:45 10 after 9:25 a.m.?

11:31:46 11 **A.** Yes. So to this document here, I
11:31:49 12 called out that I was at central booking at 8:12.
11:31:54 13 Generally after the arrest process is done, and
11:31:57 14 that takes a long time, that takes a while, I will
11:31:59 15 call out afterwards that I'm going to the lab,
11:32:02 16 Charlie 232 lab. So 9:25 would have been the time
11:32:07 17 that I left central booking to go to the lab and
11:32:11 18 submit.

11:32:14 19 **Q.** And there would be no way to know if
11:32:16 20 your partner, Joseph, remained at central booking?

11:32:20 21 **A.** There will be -- I mean, there might be
11:32:23 22 video, there might be cameras, but he's not
11:32:25 23 required to put himself on the lab because I put

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11:32:28 1 myself out and he was riding with me that day, so
11:32:31 2 he came along with me.

11:32:33 3 But he is not required to stay after I said
11:32:37 4 that Charlie 232 will be on central booking for him
11:32:42 5 to say, "I'm going with him, too."

11:32:44 6 Generally like if he's in the car here with
11:32:46 7 that summary sheet that you have right here,
11:32:49 8 dispatch would know whether or not there's two
11:32:51 9 individuals within that car.

11:32:53 10 Q. Okay. You were the primary officer for
11:33:00 11 that call at Brownell Street and Ashley?

11:33:03 12 A. That's correct.

11:33:03 13 Q. Okay. Is it typically the primary
11:33:05 14 officer who guess to the narcotics lab?

11:33:07 15 A. It could be the primary officer, but if
11:33:11 16 you have other officers assisting on your call,
11:33:15 17 that other officer can take the narcotics or
11:33:19 18 whatnot to the lab.

11:33:22 19 It's -- generally it's up to the primary
11:33:24 20 officer whether or not he wants the help to do all
11:33:28 21 that stuff.

11:33:29 22 Q. Okay. Now, I'm going to ask you to
11:33:43 23 turn to page 5 on Exhibit 36. Do you see the

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11:33:48 1 incident that occurred at 575 High Street?

11:33:52 2 **A.** I do see it.

11:33:53 3 **Q.** Okay. And what -- what was that call
11:33:55 4 referring to?

11:33:56 5 **A.** A female caller said she was suicidal
11:34:00 6 and is going to burn the house down and kill her
11:34:03 7 mother.

11:34:03 8 **Q.** Okay. What was the outcome of that
11:34:05 9 call?

11:34:06 10 **A.** That outcome of that call was can't
11:34:11 11 raise anyone. So from this -- from this
11:34:17 12 documentation here and from me reading this
11:34:19 13 documentation, it's they couldn't get a hold of the
11:34:23 14 person who called 911.

11:34:32 15 **Q.** Based on what you see on the complaint
11:34:34 16 summary report for 575 High Street --

11:34:38 17 **A.** Can't raise anyone, right there on that
11:34:40 18 form. So I don't know what happened at that day
11:34:44 19 because I don't remember that day.

11:34:45 20 But from reading this documentation right
11:34:47 21 here leads me to believe that whoever responded to
11:34:52 22 this asked radio to contact the person who made the
11:34:55 23 initial 911 call because they're knocking on doors,

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11:34:59 1 they couldn't get anybody.

11:35:00 2 So when dispatch attempted to call whoever,
11:35:02 3 they couldn't get anyone on the other line. So
11:35:05 4 that's from me picking out this documentation right
11:35:10 5 here.

11:35:10 6 **Q.** Okay. Again, you know, just based on
11:35:13 7 what you see on the complaint summary report, it
11:35:15 8 was the person who made the call that was suicidal,
11:35:17 9 correct?

11:35:18 10 **MS. HUGGINS:** Form.

11:35:22 11 **THE WITNESS:** Yes. The caller according to
11:35:25 12 this document, yes.

11:35:26 13 **BY MR. DAVENPORT:**

11:35:26 14 **Q.** Okay. And that's the person who you as
11:35:30 15 the responding officer could not find at this
11:35:32 16 location?

11:35:33 17 **A.** I don't recall the -- this incident,
11:35:37 18 but from this documentation here, it would be --
11:35:42 19 officer Gorski would be the primary officer.

11:35:45 20 I don't -- I don't recollect this incident.
11:35:48 21 I don't remember doing anything because I don't
11:35:50 22 recollect that day, so I don't know who did what in
11:35:55 23 regards to this.

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11:35:55 1 **Q.** Okay. But based on, you know, what you
11:36:02 2 saw on the -- you know, based on your best
11:36:04 3 interpretation of what the can't raise anyone part
11:36:07 4 of the complaint summary report says, you were
11:36:11 5 unable to find whoever this caller was?

11:36:14 6 **A.** Yes.

11:36:14 7 **MS. HUGGINS:** Form.

11:36:15 8 **BY MR. DAVENPORT:**

11:36:15 9 **Q.** Okay. And the caller was the person
11:36:19 10 who was suicidal at this time?

11:36:22 11 **A.** According to this document, that's
11:36:26 12 right.

11:36:26 13 **Q.** Okay. Would you be able to tell from
11:36:27 14 this document if there was anybody else who was at
11:36:30 15 this residence?

11:36:31 16 **A.** No.

11:36:32 17 **Q.** Okay. When it says 52-year-old female
11:36:35 18 is that referring to the caller?

11:36:41 19 **A.** Yes, possibly, but I'm not sure,
11:36:44 20 because it doesn't specify whether that 52-year-old
11:36:47 21 is the person.

11:36:53 22 **Q.** Okay. Now, if somebody calls saying
11:36:56 23 that they are suicidal, would that result in a 941

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11:37:01 1 mental health examination?

11:37:03 2 **A.** Generally it's you as an officer has to
11:37:07 3 make that determination when you talk to that
11:37:09 4 individual. And you talk to the person who called
11:37:12 5 911 in regards to that person.

11:37:17 6 **Q.** If you as the officer was able to
11:37:19 7 locate the person who said that they were suicidal,
11:37:22 8 would you ask them certain questions?

11:37:23 9 **A.** Yes.

11:37:24 10 **MS. HUGGINS:** Form. You can answer.

11:37:26 11 **THE WITNESS:** Yes.

11:37:27 12 **BY MR. DAVENPORT:**

11:37:27 13 **Q.** Okay. And what types of questions
11:37:29 14 would you ask?

11:37:30 15 **A.** How they're feeling, if they want to
11:37:33 16 harm themselves, if there's a situation that made
11:37:37 17 them the way they are.

11:37:39 18 It's not like -- we don't have standard
11:37:41 19 questions, but we do ask questions primarily to see
11:37:45 20 whether or not they want to harm themselves or
11:37:48 21 others.

11:37:51 22 **Q.** Are there any typical answers that
11:37:53 23 would result in you realizing that this person

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11:37:55 1 should be subjected to a 941 mental health
11:37:58 2 examination?

11:37:59 3 **MS. HUGGINS:** Form. You can answer.

11:38:00 4 **THE WITNESS:** There could be many answers to
11:38:03 5 my questioning. It's broadly -- I mean, it's all
11:38:07 6 over the place.

11:38:08 7 **BY MR. DAVENPORT:**

11:38:08 8 **Q.** Okay. If this woman did confirm that
11:38:12 9 she was feeling suicidal in response to your
11:38:15 10 questions, would you subject her to a 941 mental
11:38:20 11 health examination?

11:38:21 12 **MS. HUGGINS:** Form.

11:38:22 13 **THE WITNESS:** Yes. If she did state to me
11:38:26 14 that she wanted to harm herself or to harm others,
11:38:28 15 yes, I will -- I am required to do that 941
11:38:32 16 paperwork on her.

11:38:34 17 **BY MR. DAVENPORT:**

11:38:34 18 **Q.** Okay. What if that woman said that she
11:38:39 19 was no longer feeling suicidal?

11:38:42 20 **A.** Generally if someone just outright says
11:38:45 21 that they're suicidal and then a minute later, they
11:38:47 22 say they don't because they don't want to see
11:38:50 23 anybody, then that's not going -- generally you

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11:38:51 1 want to make sure that person is being seen because
11:38:54 2 we don't know.

11:38:54 3 I'm not a mental health expert, so if that
11:38:59 4 scenario happened to me, I would still take them to
11:39:05 5 get evaluated.

11:39:07 6 Q. Okay.

11:39:08 7 MS. HUGGINS: Form to the last question.

11:39:16 8 BY MR. DAVENPORT:

11:39:16 9 Q. Turning back to page 4 from 11:03 a.m.
11:39:19 10 to 1:05 p.m., you don't see anything else on this
11:39:24 11 document for calls that you would have responded
11:39:26 12 to?

11:39:28 13 A. 11:03 a.m.? No, I do not.

11:39:35 14 Q. Do you ever take lunch breaks during
11:39:38 15 your shift?

11:39:39 16 A. I do, yes.

11:39:41 17 Q. Do you typically take those lunch
11:39:46 18 breaks in your car, at the station? Where do you
11:39:48 19 typically take them?

11:39:49 20 A. It depends on the day, really. Busy
11:39:53 21 days, I eat my sandwich or whatever I have for
11:39:57 22 lunch in the car. Sometimes I'll eat at the
11:40:02 23 station house, but that's pretty much the only two

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11:40:04 1 places, really.

11:40:06 2 Q. Okay. Do you know if on January 1st of
11:40:08 3 2017, did you take a lunch break?

11:40:10 4 A. I do not.

11:40:11 5 Q. Okay. How long are your lunch breaks
11:40:14 6 typically for?

11:40:15 7 A. That, I can't tell you because I eat
11:40:19 8 while I work and I really don't put myself out on
11:40:22 9 breaks. Me, I'm assuming a half-hour, but that's
11:40:29 10 not like per se, that's me.

11:40:33 11 Q. Okay. When did you first become
11:40:38 12 notified of a lawsuit regarding the incident that
11:40:41 13 occurred on January 1st of 2017?

11:40:43 14 A. Last year, I believe.

11:40:46 15 Q. Okay. Do you remember roughly what
11:40:48 16 time?

11:40:49 17 A. I do not, no.

11:40:52 18 Q. Do you recall there being a video
11:40:55 19 recording that was given to you with that
11:40:57 20 complaint?

11:40:57 21 A. When I went to discuss this the last
11:41:02 22 time I was here, yes. But in regards to -- I'm
11:41:06 23 sorry.

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11:41:06 1 **MS. HUGGINS:** No. I think he's just
11:41:08 2 confused. I think he's conflating talking and
11:41:10 3 meeting with me and what you're asking.

11:41:13 4 **THE WITNESS:** Right.

11:41:13 5 **MS. HUGGINS:** You're asking about being
11:41:14 6 served with a lawsuit?

11:41:15 7 **MR. DAVENPORT:** Yes.

11:41:15 8 **MS. HUGGINS:** Okay.

11:41:16 9 **THE WITNESS:** No.

11:41:17 10 **MS. HUGGINS:** If at any point you don't
11:41:20 11 understand his question, just ask for
11:41:22 12 clarification.

11:41:23 13 **MR. DAVENPORT:** Sure.

11:41:24 14 **BY MR. DAVENPORT:**

11:41:24 15 **Q.** So in response to my question, you
11:41:26 16 don't recall having a video recording that was
11:41:28 17 served to you with the complaint?

11:41:30 18 **A.** No.

11:41:35 19 **Q.** After receiving the complaint, did you
11:41:39 20 call anyone?

11:41:40 21 **A.** No.

11:41:41 22 **Q.** Okay. Do you typically give a copy of
11:41:48 23 the complaint to the police union or somebody

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11:41:50 1 within the police department?

11:41:51 2 **A.** No.

11:41:52 3 **Q.** Okay. Did you speak to any of the
11:41:58 4 other officers who were named in this lawsuit?

11:42:01 5 **A.** No.

11:42:02 6 **Q.** Okay. What did you do after you were
11:42:05 7 served with the complaint?

11:42:06 8 **A.** Just waited until I had to show up, but
11:42:10 9 I didn't do anything in between that.

11:42:12 10 **Q.** Okay. How were you notified when to
11:42:16 11 show up?

11:42:17 12 **A.** Generally, the court office will call
11:42:19 13 the station house and they will send out notices.

11:42:23 14 **Q.** Okay. And what courthouse is that?

11:42:30 15 **A.** Buffalo City Court. County Court.

11:42:39 16 **Q.** How do they become notified of a
11:42:41 17 lawsuit?

11:42:42 18 **A.** I don't know.

11:42:43 19 **Q.** Okay.

11:42:58 20 **MS. HUGGINS:** I think there's some overlap
11:43:00 21 in terminology. The department within the police
11:43:01 22 department is called the court liaison department
11:43:04 23 that notified officers.

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11:43:05 1 **MR. DAVENPORT:** Okay.

11:43:06 2 **BY MR. DAVENPORT:**

11:43:08 3 **Q.** Do you have to give the complaint to
11:43:10 4 the court liaison officer?

11:43:12 5 **A.** No.

11:43:13 6 **Q.** Okay. So after you or another officer
11:43:19 7 is served with papers for a lawsuit, how does the
11:43:23 8 liaison officer become notified of the lawsuit
11:43:26 9 against you or another officer?

11:43:28 10 **A.** I don't know the whole process in
11:43:30 11 regards to that. I just get the notification to
11:43:33 12 show up to do a deposition and that's pretty much
11:43:35 13 it.

11:43:36 14 **Q.** Do you put some sort of a notification
11:43:39 15 in a system or something like that?

11:43:41 16 **A.** No.

11:43:44 17 **Q.** Okay. Did you ever speak with a union
11:43:50 18 rep about this lawsuit?

11:43:52 19 **A.** No.

11:43:53 20 **Q.** Okay. Did you speak with anybody, any
11:43:57 21 supervisors, any employee within the Buffalo Police
11:44:03 22 Department, not the law department, the Buffalo
11:44:05 23 Police Department about this lawsuit?

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11:44:06 1 A. No.

11:44:08 2 Q. Okay. So I guess I'm just lost. Maybe
11:44:12 3 you can explain this to me. How is it when you are
11:44:15 4 served with a lawsuit that the Buffalo Police
11:44:19 5 Department becomes notified of a lawsuit against
11:44:22 6 you?

11:44:22 7 A. Well, because it happened during work,
11:44:24 8 so if I get notification, they will call me and a
11:44:29 9 copy of the notice would be sent to the station
11:44:30 10 house.

11:44:31 11 So in regards to how do they not know, I'm
11:44:35 12 assuming that they do know, but I don't know the
11:44:36 13 whole process.

11:44:38 14 Q. So you were served at work then?

11:44:41 15 A. Possibly, yeah, it could be at work.
11:44:44 16 Yes, it could be at work or it could be a phone
11:44:47 17 call letting me know from the report technicians,
11:44:50 18 but that's pretty much it.

11:44:51 19 Q. Okay. Okay. Do you know if the
11:44:56 20 service papers were handed to you specifically?

11:44:58 21 A. No, I don't recall. Generally the
11:45:01 22 whole process is I will get a phone call letting me
11:45:05 23 know when I have court.

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11:45:06 1 And in the station house, there's a binder
11:45:09 2 with all the notifications. So once I get that
11:45:12 3 phone call, I'll go to the station house and see
11:45:14 4 the notification myself.

11:45:15 5 Q. Okay. Did you ever watch any videos of
11:45:20 6 the incident on January 1st of 2017?

11:45:22 7 A. Like ever?

11:45:24 8 Q. Yes.

11:45:25 9 A. I have in the news.

11:45:26 10 Q. Okay. Is that the only time that you
11:45:28 11 watched it?

11:45:28 12 A. Yes.

11:45:32 13 Q. Did you speak with any of the other
11:45:33 14 defendants who are named in this action?

11:45:35 15 A. No.

11:45:42 16 Q. Do you typically watch Channel 4 news
11:45:45 17 then?

11:45:45 18 A. I generally don't watch any news, but
11:45:48 19 my fiancée will have the news on, so whenever she
11:45:51 20 watches it.

11:45:52 21 Q. Okay. Did your fiancée tell you that a
11:45:56 22 video of the incident was on Channel 4 news?

11:45:58 23 A. She didn't have to tell me, I saw it.

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11:46:01 1 Q. Okay. Were you watching Channel 4 news
11:46:03 2 then when that story aired?

11:46:04 3 A. I don't know what channel it was. It
11:46:07 4 could have been Channel 2, 4, 7. I'm not sure.

11:46:09 5 Q. But you were watching it live then?

11:46:11 6 A. I don't know if it was live.

11:46:13 7 Q. Okay. Do you remember roughly what
11:46:15 8 time or what date you watched that news story?

11:46:18 9 A. It was recent, but other than that, no,
11:46:23 10 that's it.

11:46:24 11 Q. Okay. Did you watch that news story in
11:46:32 12 2020 or 2019?

11:46:33 13 A. 2020.

11:46:35 14 Q. Was it in the last couple of months
11:46:38 15 then?

11:46:39 16 A. Possibly, yes.

11:46:41 17 Q. Okay. And was that the first time that
11:46:43 18 you ever watched the video clip of what happened on
11:46:46 19 that day?

11:46:47 20 A. Yes.

11:46:48 21 MS. HUGGINS: Form.

11:46:50 22 BY MR. DAVENPORT:

11:46:51 23 Q. What was your opinion of what you saw

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11:46:53 1 on the screen?

11:46:54 2 **A.** I don't have an opinion of anything.

11:46:55 3 **MS. HUGGINS:** Form. What do you mean, what
11:46:56 4 you saw on the screen? What are you referring to?

11:46:58 5 **BY MR. DAVENPORT:**

11:46:58 6 **Q.** What was your opinion when you saw that
11:47:00 7 news story of what you saw --

11:47:02 8 **A.** What I saw from the video, I had no
11:47:04 9 opinion whatsoever.

11:47:05 10 **Q.** Did you know that that news story was
11:47:07 11 referring to the lawsuit that you had been named
11:47:11 12 in?

11:47:11 13 **A.** I don't recall the particulars of that
11:47:12 14 news article, but no, I don't recall.

11:47:15 15 **Q.** Okay. So you don't recall if you knew
11:47:18 16 at the time of watching the news story that it was
11:47:20 17 referring to the lawsuit that you had been named as
11:47:23 18 a defendant in?

11:47:25 19 **A.** Well, the news, it possibly stated that
11:47:27 20 it was part of that, the whole lawsuit, but like I
11:47:30 21 said, I don't really remember the newscast or what
11:47:33 22 was reported on that day. I do remember seeing it
11:47:36 23 on the news.

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11:47:36 1 Q. Okay. What do you remember seeing?

11:47:38 2 A. Just the video of the whole incident,
11:47:41 3 just that small clip and that's pretty much it.
11:47:45 4 And I believe his son was on the news and he was
11:47:48 5 talking about his father.

11:47:49 6 Q. Okay. Did you happen to see any sort
11:47:54 7 of a collision between a police car and a
11:47:57 8 pedestrian?

11:47:58 9 MS. HUGGINS: Form.

11:47:58 10 THE WITNESS: On that video, yes.

11:48:00 11 BY MR. DAVENPORT:

11:48:00 12 Q. Okay. Was your opinion that the
11:48:04 13 pedestrian threw himself at the police vehicle?

11:48:07 14 MS. HUGGINS: Form.

11:48:07 15 THE WITNESS: I don't have --

11:48:08 16 MS. HUGGINS: So, can you -- he's a fact
11:48:10 17 witness and he's been named as a defendant. He's
11:48:13 18 not here to provide opinion testimony.

11:48:17 19 MR. DAVENPORT: Okay.

11:48:17 20 BY MR. DAVENPORT:

11:48:18 21 Q. Actually, did you think that the
11:48:19 22 pedestrian threw himself at the police vehicle?

11:48:22 23 MS. HUGGINS: The same objection to that

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11:48:24 1 question.

11:48:24 2 **BY MR. DAVENPORT:**

11:48:25 3 **Q.** You can answer.

11:48:25 4 **MS. HUGGINS:** No, it's -- it's asking for an
11:48:27 5 opinion. He's a fact witness in this case.

11:48:30 6 **BY MR. DAVENPORT:**

11:48:31 7 **Q.** I'm asking factually did you think that
11:48:33 8 the pedestrian threw himself at the police vehicle?

11:48:35 9 **MS. HUGGINS:** No, you -- same objection.

11:48:37 10 You're asking him for his viewpoint of a video.

11:48:40 11 **MR. DAVENPORT:** Right.

11:48:40 12 **BY MR. DAVENPORT:**

11:48:41 13 **Q.** Based on what you saw on the video, did
11:48:43 14 you think that he --

11:48:43 15 **THE WITNESS:** I --

11:48:44 16 **MS. HUGGINS:** That's still a problematic
11:48:46 17 question.

11:48:46 18 **MR. DAVENPORT:** I'm going to ask the
11:48:47 19 question. I'm not going to rephrase it.

11:48:47 20 **MS. HUGGINS:** No, we --

11:48:49 21 **MR. DAVENPORT:** You can direct him to not
11:48:50 22 answer it or we can call --

11:48:51 23 **MS. HUGGINS:** We can call the judge.

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11:48:52 1 **MR. DAVENPORT:** You can call the judge if
11:48:54 2 you would like.

11:48:54 3 **MS. HUGGINS:** If you want to proceed with
11:48:56 4 the question, we can get the Court's guidance, but
11:49:01 5 he's not going to answer the question.

11:49:01 6 **MR. DAVENPORT:** All right. I'm going to
11:49:03 7 proceed with the question, so call up the judge.

12:15:57 8 (Discussion off the record.)

12:15:57 9 (A recess was then taken.)

12:16:07 10 **MR. DAVENPORT:** So back on the record.
12:16:13 11 Counsel for the defendant has objected to a line of
12:16:16 12 questioning by the plaintiffs.

12:16:18 13 The last question that was asked was whether
12:16:20 14 Mr. Santana believed that the individual seen on
12:16:23 15 the video in the news story that he watched threw
12:16:26 16 himself at a police vehicle.

12:16:28 17 The plaintiff reserves his rights to bring
12:16:32 18 Mr. Santana back for another deposition after
12:16:35 19 making a motion to determine whether that question
12:16:38 20 was proper and reserves his rights to request
12:16:42 21 attorneys fees as well as deposition costs
12:16:44 22 associated with bringing Mr. Santana back for
12:16:48 23 another deposition.

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12:16:50 1 **MS. HUGGINS:** I just want to add for the
12:16:52 2 record that while off the record, I contacted the
12:16:57 3 chambers of Magistrate McCarthy and spoke with his
12:17:01 4 law clerk, Matthew Yusick, who indicated that Judge
12:17:06 5 McCarthy was not in the office today and was not
12:17:10 6 reachable in order to provide guidance or an
12:17:13 7 informal ruling on that question.

12:17:16 8 We briefly outlined but did not lead the
12:17:18 9 question and answer -- or question and objection to
12:17:18 10 the court.

12:17:20 11 And the law clerk's guidance was to continue
12:17:27 12 with the deposition and -- in other areas that were
12:17:34 13 not objectionable and to try to complete as much of
12:17:39 14 this as possible.

12:17:41 15 If there's anything more that you want to
12:17:43 16 add to, we did that off the record, but that was on
12:17:46 17 the speakerphone with both sides indicating their
12:17:48 18 position.

12:17:50 19 **MR. DAVENPORT:** Sure. So I'm going to try
12:17:52 20 one more time to rephrase the question in a way
12:17:54 21 that is not objectionable.

12:17:54 22 **BY MR. DAVENPORT:**

12:17:55 23 **Q.** Mr. Santana, when you watched the news

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12:17:56 1 story, did you see an individual throw himself at a
12:17:59 2 police car?

12:18:00 3 **MS. HUGGINS:** Form. You can answer.

12:18:02 4 **THE WITNESS:** I wasn't there when the
12:18:04 5 incident occurred, so I can't give you an opinion
12:18:07 6 as to that incident.

12:18:09 7 **BY MR. DAVENPORT:**

12:18:10 8 **Q.** Not necessarily an opinion, you know,
12:18:13 9 with you not being there, but based on what you saw
12:18:15 10 on that news story, did you see an video throw
12:18:18 11 himself at a police vehicle?

12:18:20 12 **MS. HUGGINS:** Form. You can answer.

12:18:21 13 **THE WITNESS:** That video is so grainy, I
12:18:24 14 can't even see much of anything. Sorry, I can't
12:18:26 15 form an opinion on something that's not -- the
12:18:28 16 quality of that video is not that good.

12:18:31 17 **BY MR. DAVENPORT:**

12:18:31 18 **Q.** So once again not an opinion, I just
12:18:33 19 want to know did you see an individual throw
12:18:35 20 himself at the police vehicle?

12:18:37 21 **MS. HUGGINS:** Form, asked and answered.

12:18:40 22 **THE WITNESS:** No, I did not see him throw
12:18:42 23 himself.

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12:18:43 1 **BY MR. DAVENPORT:**

12:18:44 2 **Q.** Okay. When you arrived on the scene
12:18:46 3 that day, who did you speak to on the scene?

12:18:50 4 **A.** I don't recall who I talked to.

12:18:52 5 **Q.** Okay. Do you recall if Officer Schultz
12:18:59 6 or Officer Moriarity were at the scene?

12:19:01 7 **A.** I know they were at the scene, yes.

12:19:03 8 **Q.** Do you know if Officer McDermott and
12:19:07 9 Officer Velez were at the scene?

12:19:09 10 **A.** Yes.

12:19:09 11 **Q.** Do you recall speaking with any of the
12:19:10 12 officers?

12:19:12 13 **A.** I don't recall speaking to any of them.

12:19:14 14 **Q.** Okay. Do you know why you went to the
12:19:20 15 scene?

12:19:21 16 **A.** No.

12:19:24 17 **Q.** Did you assign yourself?

12:19:27 18 **A.** The incident is within my sector, so if
12:19:31 19 I see patrol cars there, I'm going to go over there
12:19:36 20 and make sure everything is okay, whatever
12:19:38 21 happened. That's just me.

12:19:39 22 **Q.** Okay. So you were just patrolling at
12:19:41 23 this time?

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12:19:41 1 A. Yes.

12:19:44 2 Q. Based on what you saw on the news
12:19:46 3 story, did you have your partner, Joseph, with you
12:19:49 4 at that time?

12:19:50 5 A. Yes.

12:19:51 6 Q. Okay.

12:19:53 7 A. Not based on the news story, based on
12:19:55 8 all these documentations, these exhibits that you
12:19:59 9 have before me.

12:20:00 10 Q. Okay. In the news story, did you see
12:20:04 11 the portion of the video where you actually arrived
12:20:05 12 at the scene?

12:20:06 13 A. No.

12:20:08 14 Q. Okay. Have you ever seen that portion?

12:20:10 15 A. Of me on that scene? Yes, I have.

12:20:12 16 Q. Okay. And when did you watch that?

12:20:14 17 A. Today, actually.

12:20:15 18 Q. Have you watched it at any other time
12:20:20 19 besides that?

12:20:22 20 A. The last time I was given a deposition
12:20:24 21 and that was it.

12:20:28 22 Q. For this specific incident, you watched
12:20:32 23 the video at that deposition?

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12:20:33 1 **A.** Yes.

12:20:34 2 **MS. HUGGINS:** I think he might be confusing
12:20:35 3 what he did during the interrogatories. Are you
12:20:35 4 talking --

12:20:35 5 **THE WITNESS:** Yeah, the one --

12:20:38 6 **MS. HUGGINS:** -- about when we got the
12:20:38 7 paperwork together?

12:20:39 8 **THE WITNESS:** Yeah. That was the last time.

12:20:40 9 **MS. HUGGINS:** He's just confusing the term
12:20:42 10 "interrogatories" with "deposition."

12:20:43 11 **THE WITNESS:** Right. Right.

12:20:44 12 **BY MR. DAVENPORT:**

12:20:44 13 **Q.** Understood. Understood. So besides
12:20:49 14 watching the video with you arriving at the scene
12:20:51 15 for the interrogatories and this morning, have you
12:20:55 16 ever watched that video besides those two
12:20:57 17 instances?

12:20:57 18 **A.** No.

12:20:58 19 **Q.** Okay.

12:20:58 20 **MS. HUGGINS:** And you know what? To be
12:21:00 21 fair, that may have been the confusion at the
12:21:02 22 beginning of the deposition, confusing --

12:21:03 23 **THE WITNESS:** Right.

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12:21:03 1 **MS. HUGGINS:** -- the term "deposition" with
12:21:08 2 "interrogatories."

12:21:08 3 **MR. DAVENPORT:** Okay.

12:21:09 4 **THE WITNESS:** Yeah, I'm not sure.

12:21:11 5 **BY MR. DAVENPORT:**

12:21:11 6 **Q.** That's perfectly fine. You go to law
12:21:12 7 school to learn that type of stuff. No one is
12:21:16 8 expected or probably wants to know about it.

12:21:18 9 So I'm going to show you what has been
12:21:24 10 marked as Exhibit 11. So this is a video of
12:21:33 11 surveillance footage that was obtained for the
12:21:35 12 incident that occurred on January 1st of 2017.

12:21:45 13 (Discussion off the record.)

12:21:45 14 **BY MR. DAVENPORT:**

12:22:03 15 **Q.** So this was previously marked as
12:22:04 16 Exhibit 11. It is the forth video segment. Its
12:22:09 17 numbers are 06_20170101105233. How many officers
12:22:44 18 do you see at the beginning of this video segment?

12:22:47 19 **A.** This right here? Five.

12:22:49 20 **Q.** Were you one of the five officers that
12:22:51 21 were there?

12:22:51 22 **A.** Yes.

12:22:52 23 **Q.** Do you see where your car is parked?

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12:22:55 1 **A.** I do.

12:22:56 2 **Q.** Okay. Where on the video screen do you
12:22:58 3 see your car parked?

12:22:59 4 **A.** In the upper left-hand corner of the
12:23:01 5 screen.

12:23:02 6 **Q.** Okay. Is it right next to another
12:23:05 7 Chevy Tahoe?

12:23:06 8 **A.** It's right next to it.

12:23:07 9 **Q.** Okay. And that's a police vehicle?

12:23:09 10 **A.** That is.

12:23:09 11 **Q.** Okay. So I'm going to play the
12:23:13 12 duration of that video and I'm just going to ask if
12:23:17 13 you see another officer appear on the screen.

12:23:24 14 **MS. HUGGINS:** Other than the five that --

12:23:26 15 **MR. DAVENPORT:** Other --

12:23:26 16 **MS. HUGGINS:** Okay.

12:23:26 17 **BY MR. DAVENPORT:**

12:23:27 18 **Q.** Other than the five officers seen at
12:23:29 19 the beginning of the video, do you see any other
12:23:31 20 officers appear on screen?

12:23:36 21 And then also, you know -- well, let me wait
12:23:39 22 for the video to kind of play. Do you recall the
12:23:44 23 weather conditions that day?

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12:23:45 1 **A.** No, I don't recall.

12:23:47 2 **Q.** Based on what you see on the video,
12:23:49 3 would you say that was a cold or a warm day?

12:23:51 4 **A.** Well, it's January, January is cold,
12:23:53 5 but I don't know particularly on that day.

12:23:55 6 **Q.** Okay. Do you see any snow on the
12:23:57 7 ground?

12:23:58 8 **A.** That could be snow, yes, I do.

12:24:01 9 **Q.** What else do you think it could be?

12:24:05 10 **MS. HUGGINS:** Form.

12:24:05 11 **THE WITNESS:** I don't know. I mean, it's
12:24:07 12 white stuff, so it could be snow, it could be ice,
12:24:10 13 it could be anything, I guess.

12:24:12 14 **BY MR. DAVENPORT:**

12:24:13 15 **Q.** Okay. So either snow or ice then?

12:24:15 16 **A.** Yes, but this video is not like really
12:24:17 17 clear.

12:24:18 18 **Q.** Sure. Did you walk at all on the
12:24:22 19 pavement to get to where you're currently standing
12:24:26 20 in the video?

12:24:26 21 **A.** I don't recall.

12:24:28 22 **Q.** Well, your car is parked maybe 20 feet
12:24:31 23 away from you; is that correct?

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12:24:33 1 **A.** Yes.

12:24:34 2 **Q.** So did you walk from your car to where
12:24:37 3 the officers are positioned in the middle of the
12:24:39 4 street?

12:24:39 5 **A.** Quite possibly, yes.

12:24:41 6 **Q.** Is there any other way that you would
12:24:43 7 have gotten to there?

12:24:45 8 **A.** Maybe Petronella was driving and he
12:24:47 9 dropped me off, or -- I don't know. I don't
12:24:49 10 remember anything about that day, so there's many
12:24:53 11 possibilities, but that's my car.

12:24:53 12 I could have drove it and went over the dirt
12:24:57 13 patch or the concrete or whatever that area is,
12:25:01 14 it's quite possible, yes.

12:25:02 15 **Q.** So I guess what you're saying is the
12:25:04 16 other alternate is Petronella dropped you off and
12:25:06 17 backed his vehicle up in his position now behind
12:25:10 18 the Chevy Tahoe while you stand in a circle with
12:25:12 19 the other officers.

12:25:13 20 **MS. HUGGINS:** Form.

12:25:14 21 **THE WITNESS:** That, I do not know because I
12:25:16 22 don't recall that day.

12:25:18 23 **BY MR. DAVENPORT:**

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12:25:18 1 Q. Did you see Petronella at all on the
12:25:20 2 scene?

12:25:20 3 A. I don't see anything indicating
12:25:23 4 Petronella on that screen.

12:25:24 5 Q. Do you see anything indicating that
12:25:26 6 there's more than five officers on the scene?

12:25:28 7 A. No.

12:25:28 8 Q. Are you one of the five officers that's
12:25:31 9 there?

12:25:31 10 A. I am.

12:25:32 11 Q. Is there any reason for you to believe
12:25:34 12 that any of the officers who were there are not
12:25:37 13 Officer Velez, Officer McDermott, Officer
12:25:41 14 Moriarity, and Officer Schultz?

12:25:42 15 A. Possibly Officer Petronella was inside
12:25:45 16 the vehicle the entire time, but viewing this
12:25:47 17 video, you can't really see inside the patrol
12:25:49 18 vehicle.

12:25:49 19 Q. Okay. Now we're almost at the end of
12:25:57 20 the video. The police cars are starting to pull
12:25:59 21 away. At any time, did you see a sixth officer out
12:26:03 22 on the street?

12:26:03 23 A. No.

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12:26:04 1 Q. So it's safe to say that in this video
12:26:08 2 segment, there were five officers and at no point
12:26:12 3 were there more than five officers?

12:26:13 4 MS. HUGGINS: Form.

12:26:14 5 THE WITNESS: That is -- on the video,
12:26:15 6 that's correct.

12:26:15 7 BY MR. DAVENPORT:

12:26:16 8 Q. Okay.

12:26:16 9 A. But like I said, Petronella was
12:26:18 10 possibly inside sitting in the patrol vehicle.

12:26:20 11 Q. Okay. Would there be any reason why
12:26:24 12 Petronella would not have gotten out to speak with
12:26:26 13 the officers?

12:26:27 14 A. I wouldn't know the reason why. I
12:26:30 15 don't know. It could be many factors.

12:26:35 16 Q. Do you remember what your reason was
12:26:37 17 for appearing at the scene on this date?

12:26:41 18 A. Maybe I happened to drive down Broadway
12:26:43 19 and I happened to see that patrol vehicle, so I
12:26:46 20 just went over just to see if everyone was okay and
12:26:50 21 whatnot.

12:26:51 22 Q. Are you familiar with Schmarbeck
12:26:53 23 Avenue?

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12:26:53 1 **A.** I am.

12:26:54 2 **Q.** Are you familiar with where 33 Schmarbeck
12:26:57 3 is positioned?

12:26:57 4 **A.** No, I'm not.

12:26:58 5 **Q.** What is the general structure of
12:27:08 6 Schmarbeck? Is it a straight street or is there a
12:27:10 7 curve?

12:27:11 8 **A.** It's a straight street. There's no
12:27:16 9 curve, but there's a -- Schlenker I think is the
12:27:19 10 street that is behind. It's Schmarbeck and
12:27:23 11 Schlenker, but no, there's no curve to that street.

12:27:26 12 **Q.** Okay. So it's a straight street and
12:27:27 13 then it meets with -- is it Schlenker?

12:27:29 14 **A.** Yeah, that's the intersection with
12:27:31 15 that. That's another street.

12:27:33 16 **Q.** Do they run perpendicular with each
12:27:36 17 other?

12:27:36 18 **A.** Horizontal and vertical, so Schmarbeck
12:27:44 19 is horizontal and then vertical is Schlenker. I
12:27:48 20 might be butchering that name, but that's -- I
12:27:52 21 think that's how you say it.

12:27:53 22 **Q.** All right. Can you see the entirety of
12:27:57 23 Schmarbeck from Broadway?

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12:27:59 1 **A.** Yes, you can. When you drive by it,
12:28:01 2 yes.

12:28:01 3 **Q.** So it would have been your assumption
12:28:05 4 that you were driving down Broadway and saw other
12:28:08 5 officers who were on Schmarbeck and that's why you
12:28:10 6 arrived?

12:28:10 7 **MS. HUGGINS:** Form.

12:28:11 8 **THE WITNESS:** Yes, because I'm always -- I'm
12:28:13 9 trying to look everywhere while I'm on patrol.

12:28:16 10 **BY MR. DAVENPORT:**

12:28:17 11 **Q.** Okay. I'm going to show you what's
12:28:20 12 been marked as Exhibit 4-A. Now, have you seen
12:28:32 13 this document before?

12:28:34 14 **A.** I have.

12:28:37 15 **Q.** Okay. This specific complaint summary
12:28:40 16 report you have seen?

12:28:40 17 **A.** Yes, I have.

12:28:41 18 **Q.** Okay. When did you see that document?

12:28:43 19 **A.** I saw it today.

12:28:45 20 **Q.** At any other time, have you reviewed
12:28:50 21 this document?

12:28:51 22 **A.** No, I haven't.

12:28:52 23 **Q.** Now, the officers that are listed, you

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12:29:02 1 don't see your name on there, do you?

12:29:04 2 **A.** No.

12:29:04 3 **Q.** Okay. Do you see your call sign
12:29:08 4 anywhere?

12:29:08 5 **A.** No, I do not.

12:29:10 6 **Q.** Okay. And what is an officer's
12:29:15 7 obligation to report themselves if they are
12:29:18 8 assisting with the call?

12:29:20 9 **A.** In regards to me being there per se
12:29:23 10 you're talking about?

12:29:23 11 **Q.** Uh-huh.

12:29:24 12 **A.** I'm not obligated to let dispatch know
12:29:27 13 that I'm over at the area. Generally if I show up
12:29:31 14 on a scene and that officer needs assistance, then
12:29:35 15 I will go to dispatch and say put me out on this
12:29:37 16 call. But from this document here, I didn't feel
12:29:40 17 like I needed to be on this call.

12:29:42 18 **Q.** Okay. Did you feel differently after
12:29:48 19 speaking with the officers who were at the scene?

12:29:50 20 **MS. HUGGINS:** Form. You can answer.

12:29:51 21 **THE WITNESS:** I didn't have no opinion
12:29:53 22 because I didn't know what was going on and I don't
12:29:56 23 recollect that day.

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12:29:56 1 **BY MR. DAVENPORT:**

12:29:57 2 **Q.** Okay. Did you ask the officers that
12:29:59 3 were present at the scene what was going on?

12:30:01 4 **A.** I don't recall.

12:30:03 5 **Q.** Would that be something that you would
12:30:05 6 generally do?

12:30:06 7 **A.** That's something that I would generally
12:30:08 8 do with every single call. And I'm talking about
12:30:11 9 thousands, maybe, of calls that I've answered
12:30:13 10 throughout my career.

12:30:14 11 But yes, that's typically for me, my
12:30:18 12 perspective, I will ask to see whether or not they
12:30:19 13 need help or anything.

12:30:20 14 **Q.** Okay. Would you also ask them general
12:30:22 15 details about the -- what the incident that took
12:30:27 16 place?

12:30:27 17 **A.** No, because generally, if it's not my
12:30:29 18 call, I don't want to stick around. If they don't
12:30:32 19 need my help, then I'm on my merry way.

12:30:35 20 **Q.** So that's generally you're not going to
12:30:38 21 ask details about what the call is for those
12:30:40 22 officers being there?

12:30:41 23 **A.** No. Every single call, if I show up on

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12:30:44 1 a call and I ask to see if they need help and they
12:30:48 2 say no, I'm going back on patrol. That's the way
12:30:51 3 it operates.

12:30:53 4 Q. So what would happen if you asked
12:30:55 5 questions? Would you be required to stay at the
12:30:56 6 scene if you knew why those officers were there?

12:30:59 7 A. It depends on whether or not they
12:31:00 8 needed my help. And if they did, then I'd say,
12:31:04 9 hey, what do you want me to do? And that's pretty
12:31:06 10 much it.

12:31:06 11 Q. Okay. But you're never asking the
12:31:10 12 officers, you know, just general details about the
12:31:14 13 call they're responding to?

12:31:15 14 A. No.

12:31:15 15 MS. HUGGINS: Form.

12:31:16 16 THE WITNESS: No, I do not.

12:31:18 17 BY MR. DAVENPORT:

12:31:19 18 Q. And just so it's clear for the record,
12:31:22 19 if you ask general questions about the call that
12:31:25 20 they're responding to, is there any obligation on
12:31:27 21 your part to stay at that call if you know those
12:31:27 22 details?

12:31:31 23 A. Well, if I --

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12:31:31 1 **MS. HUGGINS:** Form.

12:31:32 2 **THE WITNESS:** If I did ask, yes. Like I
12:31:36 3 said before, if it's something that they need my
12:31:38 4 assistance with, then I will ask questions.

12:31:40 5 But if I just stop by and say, hey, what's
12:31:43 6 up, you know, you guys need anything or something
12:31:45 7 like that, and that's general.

12:31:47 8 If they don't need my help, I don't ask no
12:31:49 9 further questions and I'm on my way. But I do not
12:31:52 10 talk to officers in regard to calls because
12:31:55 11 generally when I take my call and if an officer
12:31:57 12 shows up and I don't need their help, I'll tell them I
12:32:02 13 don't need your help and that's it.

12:32:03 14 Pretty much when I do my calls generally, I
12:32:05 15 just want me and other person and that's it. So
12:32:08 16 that's the way I operate. I don't know about other
12:32:11 17 officers, but that's just me.

12:32:12 18 **Q.** Okay. When you're asking other
12:32:16 19 officers if they need any assistance, do you
12:32:18 20 typically do that from your car or did you get out
12:32:21 21 of your car to ask that question?

12:32:22 22 **A.** I'll get out of my vehicle. It depends
12:32:26 23 on where they're standing at that point in time.

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12:32:28 1 Sometimes I'll drive up and I'll ask and if they
12:32:32 2 say they'll all good, I drive away, but it depends.

12:32:36 3 Q. Is there any reason why on this last
12:32:41 4 video segment that you watched that you parked
12:32:44 5 behind the Chevy Tahoe instead of pulling up where
12:32:48 6 the officers were?

12:32:48 7 A. There was no reason whatsoever why I
12:32:50 8 parked that like that. I don't know. I can't tell
12:32:53 9 you because I don't remember that day.

12:32:54 10 Q. Okay. At the time when you got to the
12:32:57 11 scene, did you know that an individual had been
12:32:59 12 arrested?

12:33:00 13 A. No.

12:33:02 14 Q. And that's you recall not remembering --
12:33:05 15 you recall not knowing that somebody had been
12:33:07 16 arrested?

12:33:08 17 A. Well, if I was only there for one
12:33:09 18 second, I'm pretty sure they're all good, so I
12:33:14 19 don't recall what conversation we had at that point
12:33:15 20 in time --

12:33:16 21 Q. Is that how long --

12:33:18 22 A. -- or with everybody else.

12:33:18 23 Q. I'm sorry.

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12:33:20 1 A. I wasn't there that long, so.

12:33:21 2 Q. Okay. When you arrived at the scene,
12:33:28 3 were the other officers talking amongst themselves?

12:33:31 4 A. According to the video, yes.

12:33:33 5 Q. Okay. And they were talking amongst
12:33:37 6 themselves when you arrived at the scene for the
12:33:41 7 first time?

12:33:41 8 A. I don't recall the situation, so it's
12:33:44 9 possible.

12:33:45 10 Q. Okay. Did you have any general sense
12:33:50 11 of how long those officers were at this incident at
12:33:53 12 this time?

12:33:53 13 A. No.

12:33:56 14 Q. Did you receive any sort of calls at
12:34:00 15 that time asking, you know, if the officers were
12:34:04 16 spending too much time at a call?

12:34:06 17 A. No.

12:34:08 18 Q. Did you receive any calls from Anthony
12:34:12 19 McHugh relating to this incident?

12:34:14 20 A. No.

12:34:16 21 Q. Do you typically use your personal cell
12:34:19 22 phone to communicate with Mr. McHugh?

12:34:21 23 A. No. Generally me, I will let dispatch

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12:34:25 1 know to raise my lieutenant. And from there,
12:34:29 2 usually I'd rather just go to the station house to
12:34:32 3 see him in person. I don't do anything in regards
12:34:35 4 to work over my cell phone.

12:34:37 5 Q. Okay. Is that just a personal
12:34:42 6 preference of yours?

12:34:43 7 A. Yeah, that's -- yeah, that's my
12:34:45 8 personal preference. I just don't like too much of
12:34:47 9 anything. I just like to be to myself generally.
12:34:51 10 So I don't use anything in regards to just work. I
12:34:55 11 just use work, everything work, radios or
12:34:58 12 face-to-face conversations.

12:34:59 13 Q. Is there a requirement to only use work
12:35:02 14 devices to communicate with other officers?

12:35:04 15 A. I don't think that's -- there's a
12:35:06 16 requirement for it, but that's my personal
12:35:13 17 preference.

12:35:13 18 Q. Do you know if there are other officers
12:35:16 19 that also share that personal preference?

12:35:18 20 A. No, I do not.

12:35:19 21 Q. Do you know if your partner at the
12:35:22 22 time, Joseph Petronella, had that preference?

12:35:26 23 A. No.

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12:35:28 1 Q. No, he didn't have that preference or
12:35:31 2 no, you don't know if he has that preference?

12:35:32 3 A. I don't know if he has that preference,
12:35:33 4 but that's just my personal preference.

12:35:39 5 Q. Do you remember having any
12:35:44 6 conversations with anybody at the scene on
12:35:50 7 January 1st of 2017, any individuals besides the
12:35:53 8 officers?

12:35:54 9 A. No.

12:35:57 10 Q. No, you didn't have any conversations
12:35:59 11 or no, you don't recall?

12:36:00 12 A. No, I do not recall any conversations
12:36:02 13 that I had that day.

12:36:03 14 Q. Okay. For the news story that you
12:36:14 15 watched, what do you recall seeing on the screen?
12:36:21 16 What from --

12:36:21 17 A. Just that little snippet of the vehicle
12:36:25 18 colliding with that person. That's all I saw.
12:36:29 19 That's all the news played.

12:36:30 20 Q. All right. And then you also referred
12:36:35 21 to another video segment where Mr. Kistner's son --

12:36:35 22 A. Yeah.

12:36:38 23 Q. -- approached you?

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12:36:38 1 **A.** Yes. He was just talking about his
12:36:40 2 father.

12:36:42 3 **Q.** Do you have any opinion of that news
12:36:44 4 story?

12:36:44 5 **A.** No, I do not.

12:36:47 6 **Q.** Do you believe that it was accurate
12:36:50 7 reporting?

12:36:50 8 **A.** My personal opinion is that I don't
12:36:52 9 trust anything that the media puts out. Generally
12:36:55 10 I will do -- I'm mainly the facts, so if I can't
12:36:59 11 see the facts in front of me, then I'm not going to
12:37:02 12 believe it.

12:37:03 13 **Q.** Turning to --

12:37:03 14 **MS. HUGGINS:** Form as to the last question.

12:37:07 15 **MR. DAVENPORT:** Can we go off the record
12:37:13 16 really quick?

12:37:50 17 (Discussion off the record.)

12:37:50 18 **BY MR. DAVENPORT:**

12:37:55 19 **Q.** Now, turning again to Exhibit 4-A, do
12:38:04 20 you see where at 10:55:42, it says: Male hit my
12:38:08 21 car, ADI needed?

12:38:10 22 **A.** ADI notified.

12:38:12 23 **Q.** ADI notified.

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12:38:12 1 A. I do see that.

12:38:14 2 Q. Now, what does ADI notify refer to?

12:38:21 3 A. The ambulance was notified.

12:38:23 4 Q. Okay. Does it say who notified the
12:38:27 5 ambulance?

12:38:29 6 A. No, it does not.

12:38:31 7 Q. Okay. Would you expect an ambulance to
12:38:34 8 be notified if a male was hit by a car?

12:38:37 9 A. Yes.

12:38:39 10 Q. Would you expect an ambulance to
12:38:42 11 respond to an individual being hit by a car?

12:38:45 12 MS. HUGGINS: Form.

12:38:45 13 THE WITNESS: Yes.

12:38:46 14 BY MR. DAVENPORT:

12:38:46 15 Q. Okay. Do you know if an ambulance
12:38:48 16 responded to the incident here?

12:38:52 17 A. No, I do not.

12:38:53 18 Q. Okay. What about based on what you see
12:38:55 19 on this Exhibit 4-A? Can you tell us if an
12:39:00 20 ambulance responded?

12:39:14 21 A. No.

12:39:15 22 Q. You can't tell or no, an ambulance
12:39:17 23 didn't respond?

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12:39:17 1 **A.** Well, it's saying that the female
12:39:20 2 called for the ambulance for her boyfriend and then
12:39:24 3 it states that the other one was the ADI notified.
12:39:29 4 Where was that one now?

12:39:33 5 Oh, that's the only two times that I see
12:39:35 6 here: Male hit by police car. ADI notified.
12:39:39 7 Another call came out female requests ambulance for
12:39:42 8 injured boyfriend. ADI notified.

12:39:44 9 **Q.** Okay. But there's nothing on this
12:39:47 10 document that says that an ambulance actually
12:39:49 11 arrived?

12:39:51 12 **A.** I can't see an ambulance arriving. It
12:39:54 13 doesn't state on this document.

12:39:55 14 **Q.** Is that something that you would expect
12:39:57 15 to see on the document if an ambulance did arrive?

12:39:59 16 **MS. HUGGINS:** Form.

12:40:00 17 **THE WITNESS:** It depends on the situation.
12:40:03 18 Sometimes officers will state on the air that the
12:40:06 19 ambulance has arrived or we'll put it on paperwork
12:40:09 20 if there is paperwork, but on this document per se,
12:40:12 21 no, I don't see it, that they arrived.

12:40:15 22 **BY MR. DAVENPORT:**

12:40:16 23 **Q.** Okay. Did you speak with any of the

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12:40:21 1 officers to know if -- you know, what happened to
12:40:25 2 this male who was hit by a police car?

12:40:27 3 **MS. HUGGINS:** Form.

12:40:27 4 **THE WITNESS:** No.

12:40:28 5 **MS. HUGGINS:** Asked and answered.

12:40:30 6 **THE WITNESS:** No.

12:40:31 7 **BY MR. DAVENPORT:**

12:40:32 8 **Q.** Did you know when you were responding
12:40:33 9 to the call that a male had been hit by a police
12:40:35 10 car?

12:40:35 11 **MS. HUGGINS:** Form.

12:40:36 12 **THE WITNESS:** No.

12:40:37 13 **BY MR. DAVENPORT:**

12:40:44 14 **Q.** Have you ever canceled ambulances
12:40:47 15 before during your line of duty?

12:40:50 16 **A.** I have.

12:40:51 17 **Q.** And under what circumstances did you
12:40:53 18 cancel ambulances?

12:40:54 19 **A.** Generally at an accident, usually we'll
12:41:01 20 call for the ambulance to respond on the scene. If
12:41:04 21 they don't -- if the patient himself don't require
12:41:09 22 any assistant, we'll call them off, but generally
12:41:12 23 it's -- if they don't need to go to the hospital or

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12:41:15 1 anything like that, we'll cancel it.

12:41:19 2 Q. Okay. Are there any other circumstances
12:41:24 3 where you would cancel an ambulance?

12:41:27 4 A. That's pretty much it.

12:41:28 5 Q. Okay. So you would never cancel an
12:41:31 6 ambulance because you believed that you could get
12:41:33 7 the individual to ECMC quicker?

12:41:35 8 A. I would not cancel ADI for that.
12:41:38 9 That's their job, so I'd rather them take them to
12:41:41 10 the hospital.

12:41:42 11 But I mean, for -- from my experience, the
12:41:45 12 only time I cancel ADI is when they don't want it,
12:41:51 13 when they refuse to go to the hospital because they
12:41:53 14 don't seem like they don't need it.

12:41:56 15 Q. Okay. So when you say "they," you're
12:41:58 16 referring to --

12:41:59 17 A. I'm referring to injured parties.
12:42:03 18 Yeah, that's what I'm referring to.

12:42:05 19 Q. Okay. Is that something that officers
12:42:10 20 are trained on, when to cancel ADI?

12:42:14 21 A. No, there's no -- to my recollection,
12:42:19 22 there's no training with regards to when to cancel
12:42:22 23 ADI.

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12:42:23 1 I do it just so that if the ambulance does
12:42:26 2 respond and that injured person doesn't require
12:42:29 3 them, I want that ambulance to go back in service
12:42:31 4 so they can serve someone else. That's why I do
12:42:34 5 it, but that's just me.

12:42:37 6 Q. Have you ever received training that
12:42:39 7 says anywhere in that training to cancel ADI if an
12:42:42 8 officer feels that they can get the injured party
12:42:45 9 to the hospital quicker?

12:42:46 10 MS. HUGGINS: Form.

12:42:46 11 THE WITNESS: I can't -- I can't recall.

12:42:47 12 BY MR. DAVENPORT:

12:42:48 13 Q. All right. Do you know if there's any
12:42:50 14 training that says that an officer should not
12:42:52 15 cancel ADI just because they believe that they can
12:42:55 16 get the individual to the hospital quicker?

12:42:56 17 A. I am not sure.

12:43:01 18 Q. But as you sit here today, you do not
12:43:05 19 recall being told one way or the other whether to
12:43:08 20 cancel --

12:43:10 21 A. Yes, I don't recall ever being trained
12:43:11 22 on how to cancel or when to cancel the ambulance.
12:43:14 23 This is just going on my own experience.

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12:43:16 1 **Q.** Okay. Are you aware of officers who
12:43:26 2 cancel ambulances because they believe that they
12:43:29 3 can get the injured party to the hospital quicker?

12:43:31 4 **MS. HUGGINS:** Form. You can answer.

12:43:32 5 **THE WITNESS:** I've been aware of certain
12:43:35 6 situations of a life-and-death situation where it
12:43:40 7 was best that they transported that individual.

12:43:44 8 **BY MR. DAVENPORT:**

12:43:44 9 **Q.** Is that something that happens
12:43:46 10 routinely or is that --

12:43:48 11 **A.** No, it's just you can't control that.
12:43:50 12 I mean, it just happens, so you just have to use
12:43:52 13 your judgment.

12:43:53 14 **Q.** Okay. So it's rare that those officers
12:43:57 15 are faced with those types of situations?

12:44:00 16 **A.** It is a rare event, yes.

12:44:02 17 **Q.** And that's generally only in
12:44:04 18 life-and-death situations that you've heard of
12:44:06 19 officers canceling ambulances to drive the
12:44:09 20 individual to ECMC?

12:44:10 21 **MS. HUGGINS:** Form.

12:44:10 22 **THE WITNESS:** Well, it's not pretty much
12:44:13 23 canceling, it's just putting that individual and

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12:44:15 1 transporting them to the hospital.

12:44:17 2 But yes, there's been circumstances where in
12:44:20 3 regards to that person's life-or-death situation
12:44:23 4 that they've transported them to the hospital, yes.

12:44:25 5 **BY MR. DAVENPORT:**

12:44:25 6 **Q.** Okay. Are you aware of any other times
12:44:28 7 when an officer has canceled an ambulance besides
12:44:32 8 life-and-death situation for the injured party?

12:44:35 9 **A.** Like I mentioned earlier in regards to
12:44:37 10 accidents, it's pretty much that injured person
12:44:39 11 whether or not they want to be seen or taken to the
12:44:41 12 hospital. It's up to them.

12:44:43 13 **Q.** So besides life-and-death situations
12:44:46 14 and instances where the injured party says that
12:44:48 15 they do not want to go to a hospital by an
12:44:52 16 ambulance, are you aware of any other circumstances
12:44:54 17 where officers canceled ambulances for an injured
12:44:57 18 party?

12:44:57 19 **MS. HUGGINS:** Form.

12:44:57 20 **THE WITNESS:** No. No, I can't speak to --
12:45:01 21 in regards to other officers. I'm just saying in
12:45:03 22 regards to myself, and what I've been through.

12:45:06 23 **BY MR. DAVENPORT:**

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12:45:06 1 Q. But also for yourself, have you heard
12:45:08 2 of any other circumstances or instances where an
12:45:11 3 officer has canceled an ambulance besides
12:45:14 4 life-and-death situations and instances where an
12:45:16 5 injured party has refused an ambulance?

12:45:20 6 A. No.

12:45:20 7 MS. HUGGINS: Form.

12:45:20 8 THE WITNESS: No.

12:45:22 9 BY MR. DAVENPORT:

12:45:22 10 Q. Okay. Are you aware that the officers
12:45:29 11 on the scene canceled the ambulance for this
12:45:32 12 incident?

12:45:33 13 A. No, I was not aware.

12:45:35 14 Q. Is this the first time, me telling you
12:45:38 15 that that happened?

12:45:38 16 A. I'm not aware because I don't recall.

12:45:41 17 Q. Before this deposition today, were you
12:45:44 18 aware that the officers canceled the ambulance to
12:45:50 19 arrive at 33 Schmarbeck?

12:45:51 20 A. No.

12:45:51 21 Q. So this is the first time that you are
12:45:53 22 learning of that?

12:45:54 23 A. Yes.

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12:45:54 1 Q. What's your opinion of those
12:45:56 2 officers -- strike that.

12:46:02 3 A. I don't -- I'm not going to --

12:46:04 4 MS. HUGGINS: No, no.

12:46:05 5 MR. DAVENPORT: That's okay.

12:46:05 6 MS. HUGGINS: Yeah, he didn't complete his
12:46:11 7 question.

12:46:14 8 BY MR. DAVENPORT:

12:46:14 9 Q. Is that something that you would expect
12:46:15 10 for a male getting hit by a car, if that male did
12:46:18 11 not request to have the ambulance canceled that
12:46:22 12 that ambulance would actually still be canceled?

12:46:24 13 MS. HUGGINS: Form. That calls for
12:46:25 14 speculation.

12:46:27 15 THE WITNESS: If I dealt with the situation
12:46:30 16 where someone that was hit by a car and they told
12:46:32 17 me that they didn't require the ambulance, then I'm
12:46:35 18 going to respect their wishes and cancel the
12:46:38 19 ambulance.

12:46:40 20 BY MR. DAVENPORT:

12:46:40 21 Q. But if the individual didn't say that
12:46:42 22 they wanted to have the ambulance canceled, you
12:46:45 23 would not cancel the ambulance?

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12:46:48 1 **MS. HUGGINS:** Form.

12:46:49 2 **THE WITNESS:** Well, I will not, no and
12:46:51 3 that's their wishes. If they want to be
12:46:53 4 transported, they can be transported.

12:46:54 5 **BY MR. DAVENPORT:**

12:46:55 6 **Q.** Okay. So we've heard testimony before
12:46:57 7 from Officer Schultz that his reason -- that he
12:47:02 8 canceled the ambulance, but this is the first time
12:47:05 9 that you learned of that. Correct?

12:47:06 10 **A.** That's correct.

12:47:08 11 **Q.** And Officer Schultz testified that the
12:47:12 12 reason why he canceled the ambulance was because he
12:47:15 13 believed that he could get the pedestrian to -- the
12:47:19 14 injured party to the hospital quicker than an
12:47:21 15 ambulance would.

12:47:22 16 **A.** Okay.

12:47:23 17 **Q.** Okay. Now, in looking at the complaint
12:47:30 18 summary report, what is the time between the time
12:47:34 19 stamp 10:55:42, male hit by police car, and the
12:47:38 20 time that the location was changed to ECMC?

12:47:43 21 **A.** 11:22:34 for the first.

12:47:48 22 **Q.** Okay. So would it be safe to assume
12:47:53 23 that it was approximately a half an hour before

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12:47:56 1 that individual was transported to the ECMC?

12:48:00 2 A. No, 28 minutes.

12:48:03 3 Q. But it was approximately a half an
12:48:05 4 hour?

12:48:06 5 A. It wasn't a half-hour according to the
12:48:08 6 document right here.

12:48:09 7 Q. 28 minutes is roughly close to 30
12:48:12 8 minutes.

12:48:12 9 A. Yeah, but it's not a half-hour.

12:48:14 10 Q. Would you be more comfortable if I said
12:48:17 11 28 minutes?

12:48:18 12 A. According this documentation, yes, that
12:48:19 13 is correct.

12:48:19 14 Q. Okay. So 28 minutes was the time that
12:48:23 15 elapsed between a male being hit by the car and the
12:48:26 16 officer's transporting the individual to ECMC?

12:48:28 17 A. Yes, according to this document in
12:48:30 18 front of me.

12:48:30 19 Q. Okay. How long does it take an
12:48:32 20 ambulance to arrive at a scene after they are
12:48:34 21 notified?

12:48:35 22 A. I cannot give you the times on when
12:48:37 23 they respond on scenes. It could be minutes and

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12:48:40 1 they could call back and say it's going to take
12:48:43 2 some time, so I don't know. It depends on how busy
12:48:46 3 they are.

12:48:47 4 Q. Do you know how long it takes to drive
12:48:54 5 from 33 Schmarbeck to ECMC roughly?

12:48:58 6 A. It also depends on various -- it -- it
12:49:03 7 could be heavy traffic. Heavy traffic could be
12:49:05 8 over 20 minutes; light traffic probably 10, 15
12:49:09 9 minutes. It all depends on really how many cars
12:49:13 10 are on the road.

12:49:14 11 Q. What about lights and sirens?

12:49:16 12 MS. HUGGINS: Form.

12:49:17 13 THE WITNESS: It's depending on traffic,
12:49:19 14 too, because even if you do have your lights and
12:49:22 15 sirens, you have to like find your way around it,
12:49:25 16 but I could say 10 minutes, maybe.

12:49:29 17 BY MR. DAVENPORT:

12:49:29 18 Q. So maybe 10 minutes with lights and
12:49:31 19 sirens?

12:49:31 20 A. Yeah, but that's not even -- that's a
12:49:33 21 residential area and you're not like going like
12:49:36 22 super-fast because there's people all around that.
12:49:39 23 So you have to be -- you're going fast but you're

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12:49:41 1 not going so fast because of the pedestrians that
12:49:45 2 are all over the streets.

12:49:47 3 **Q.** Is there a general speed that officers
12:49:49 4 are expected to not surpass when they're driving
12:49:53 5 through residential areas?

12:49:54 6 **MS. HUGGINS:** Form.

12:49:55 7 **THE WITNESS:** Generally, and this is from my
12:49:57 8 point of view, while at patrol, I follow the rules
12:50:01 9 of the road.

12:50:02 10 I don't know if you want to expand that to
12:50:05 11 when I respond to a priority call, which -- which
12:50:07 12 is like a -- it could be a rescue, it could be a
12:50:14 13 burglary in progress.

12:50:16 14 I'm not pushing over 60 because, like I
12:50:18 15 said, I'm watching out for pedestrians. I'm going
12:50:20 16 with haste but I'm also going -- like safety is my
12:50:25 17 number one priority when I'm responding to calls.

12:50:28 18 **BY MR. DAVENPORT:**

12:50:28 19 **Q.** When you're not responding to a
12:50:29 20 high-priority call, what general speed are you
12:50:32 21 driving through residential areas?

12:50:34 22 **MS. HUGGINS:** Form.

12:50:36 23 **THE WITNESS:** 25, 30. Within 20, 30. But

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12:50:44 1 if I'm like on Broadway, the main intersection, I'm
12:50:47 2 going 30, 35, but if I'm driving the streets, kind
12:50:51 3 of like between 20 and 30 miles an hour.

12:50:53 4 **BY MR. DAVENPORT:**

12:50:54 5 **Q.** Okay. Besides the speed limit, are
12:50:56 6 there other vehicle and traffic laws that you abide
12:51:01 7 by?

12:51:01 8 **A.** Everything.

12:51:03 9 **Q.** Does that include wearing a seatbelt?

12:51:04 10 **A.** Oh, yeah, absolutely.

12:51:06 11 **Q.** All right. Does that include checking
12:51:08 12 your mirrors?

12:51:09 13 **A.** Every morning, I check my entire patrol
12:51:12 14 vehicle to make sure that it's functioning.

12:51:15 15 **Q.** Okay. Do officers ever face discipline
12:51:24 16 for driving too fast through residential areas?

12:51:27 17 **MS. HUGGINS:** Form.

12:51:27 18 **THE WITNESS:** I've never heard of anything,
12:51:32 19 so I can't really answer that question.

12:51:33 20 **BY MR. DAVENPORT:**

12:51:35 21 **Q.** Do officers ever face discipline for
12:51:38 22 not wearing a seatbelt?

12:51:39 23 **A.** Again, I've never heard of anything

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12:51:42 1 from my point of view, so I can't really answer
12:51:45 2 that. But I've never heard of anything, no.

12:51:47 3 Q. Do you receive training on how to drive
12:51:49 4 a vehicle?

12:51:51 5 A. The only training that we receive is
12:51:54 6 during the academy. And that's all -- that's all
12:51:59 7 the training I received in regards to driving.

12:52:03 8 Q. So that would have been through your
12:52:05 9 first initial six months of training?

12:52:07 10 A. Yes.

12:52:08 11 Q. And what kind of things are they
12:52:12 12 teaching you about vehicle and traffic safety
12:52:14 13 during those initial classes?

12:52:16 14 A. In a vehicle, it's driving the patrol
12:52:20 15 car at a high rate of speed. Stopping. Driving
12:52:24 16 backwards. Yeah, that's all I can remember in
12:52:29 17 regards to that.

12:52:31 18 Q. With regard to driving backwards, what
12:52:36 19 specifically do they train you on?

12:52:39 20 A. As far as I know, driving backwards,
12:52:42 21 when I did it, it was pretty much like going over
12:52:47 22 30 miles an hour and pretty much just driving, just
12:52:50 23 driving backwards and positioning yourself when you

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12:52:54 1 do drive backwards to be like within certain cones
12:52:58 2 or whatever. But that was a long time ago, but
12:53:01 3 that's pretty much all I remember in regards to
12:53:03 4 that.

12:53:04 5 Q. Do they do anything -- do they do any
12:53:07 6 training for driving backwards and then pulling
12:53:10 7 forwards?

12:53:10 8 A. During that training, yes. Not only do
12:53:12 9 you drive backwards, I mean, it's turning the
12:53:15 10 vehicle over and there's an obstacle that you have
12:53:18 11 to avoid like at certain points.

12:53:20 12 And you have to like make a split-second
12:53:21 13 decision whether you need to take a right or a
12:53:24 14 left. Yeah, that's pretty much all I could -- I
12:53:27 15 could remember.

12:53:28 16 Q. Is there somebody who was in the car
12:53:30 17 with you during this training?

12:53:32 18 A. Yes. There's an instructor with you.

12:53:35 19 Q. All right. And how long during this
12:53:38 20 training are you actually driving for?

12:53:41 21 A. We were there the entire day, so we
12:53:44 22 were driving that whole day. I don't know what day
12:53:48 23 it was, but I do remember it was a whole day that

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12:53:51 1 we were there training in vehicles.

12:53:53 2 Q. Okay. As part of that day, were you
12:53:56 3 also doing some in-class instruction?

12:53:59 4 A. No. I don't recall back then when we
12:54:03 5 did classrooms, no.

12:54:05 6 Q. Okay.

12:54:08 7 MR. DAVENPORT: I'm sorry, could we go off
12:54:09 8 the record really quick?

12:55:16 9 (Discussion off the record.)

12:55:16 10 BY MR. DAVENPORT:

12:55:26 11 Q. Now, sticking with Exhibit 4-A, do you
12:55:30 12 see at 11:30:35, it says that the suspect broke the
12:55:35 13 mirror on car 473 intentionally?

12:55:38 14 A. I do see that.

12:55:39 15 Q. Okay. And what does that tell you when
12:55:45 16 you read that?

12:55:47 17 A. That the suspect broke the mirror
12:55:49 18 intentionally, with intent.

12:55:52 19 Q. Okay. Do you see at 11:07:31 where it
12:56:01 20 says cameras have -- on 37 has video of the man
12:56:06 21 flopping on the ground?

12:56:07 22 A. I do see that.

12:56:09 23 Q. And what does that tell you?

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12:56:10 1 **A.** The cameras on 37 has a video of the
12:56:13 2 man flopping on the ground, so some man flopping on
12:56:17 3 the ground.

12:56:18 4 **Q.** Okay. Would that tell you that the
12:56:21 5 suspect was flopping on the ground?

12:56:24 6 **A.** No, it just says a man flopping on the
12:56:26 7 ground, so it doesn't specify who.

12:56:29 8 **Q.** Okay. So I'm going to show you what's
12:56:32 9 been previously marked as Exhibit 11. And it is
12:56:39 10 video number 06_20170101102529. I'm just going to
12:56:52 11 rewind it so you can see the beginning. So I would
12:56:55 12 just like you to watch this video.

12:58:18 13 Now, at this portion of the video segment,
12:58:20 14 we are a minute and 13 seconds into the video clip.
12:58:26 15 Do you agree that the individual has been taken
12:58:30 16 into custody or detained at this time?

12:58:32 17 **MS. HUGGINS:** Form. You can answer.

12:58:33 18 **THE WITNESS:** All I can see is that there's
12:58:35 19 officers on either side of him, but I don't know
12:58:38 20 whether or not he's in custody because of the
12:58:40 21 quality of this video.

12:58:41 22 **BY MR. DAVENPORT:**

12:58:41 23 **Q.** Okay. Is the individual standing at

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12:58:43 1 this time?

12:58:44 2 **A.** Yes, he is.

12:58:45 3 **Q.** Okay. At any point before that man was
12:58:49 4 standing, did you see him flopping around on the
12:58:51 5 ground?

12:58:52 6 **A.** No, I did not.

12:58:54 7 **Q.** Okay. So I'm going to play that exact
12:59:08 8 segment again and I just want you to generally
12:59:10 9 describe what you see in the video.

12:59:17 10 **A.** The patrol vehicle is driving away
12:59:22 11 initially, so he's walking towards the other one as
12:59:25 12 the patrol vehicle is pulling out. And that's when
12:59:29 13 vehicle and person collide with each other.

12:59:33 14 **Q.** Okay.

12:59:34 15 **MS. HUGGINS:** Form. The exhibit speaks for
12:59:36 16 itself.

12:59:37 17 **BY MR. DAVENPORT:**

12:59:38 18 **Q.** What do you see right here?

12:59:40 19 **A.** I don't know who that individual is
12:59:41 20 walking up there. I see two officers approaching
12:59:46 21 the vehicle and someone exiting the patrol vehicle.

12:59:50 22 The person who is not on officer is walking
12:59:53 23 back towards the sidewalk and now I see three

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12:59:57 1 officers on the driver's side door.

13:00:00 2 **MS. HUGGINS:** Form to the last question.

13:00:02 3 **BY MR. DAVENPORT:**

13:00:03 4 **Q.** Now, at any point for that individual
13:00:07 5 who is not an officer who appeared on the screen,
13:00:09 6 did he do anything that was threatening to the
13:00:11 7 officers?

13:00:12 8 **MS. HUGGINS:** Form.

13:00:13 9 **THE WITNESS:** I can't see anything because
13:00:14 10 the view is obstructed by the truck itself.

13:00:19 11 **BY MR. DAVENPORT:**

13:00:19 12 **Q.** Besides the part that was obstructed by
13:00:21 13 the truck, did you see that individual do anything
13:00:23 14 threatening to the officers?

13:00:25 15 **MS. HUGGINS:** Form.

13:00:26 16 **THE WITNESS:** The quality of this video, you
13:00:27 17 can't see anything.

13:00:29 18 **BY MR. DAVENPORT:**

13:00:30 19 **Q.** Well, I mean, you can see something on
13:00:31 20 the video, right?

13:00:32 21 **A.** I can't see him on that video. All I
13:00:35 22 can see is the officers standing around him. I
13:00:37 23 didn't see anything else because the view is

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13:00:39 1 obstructed by the truck.

13:00:42 2 He was obstructed by the truck. The
13:00:43 3 officers were around the truck. That's all I saw.

13:00:46 4 Q. Did you see the portion where he was
13:00:48 5 standing out in the middle of the street?

13:00:51 6 A. Before he got with the vehicle? Yes, I
13:00:54 7 seen that before, but you're asking me in regards
13:00:57 8 to if I seen an incident with the officers.

13:00:59 9 And I'm telling you no because the -- the
13:01:03 10 view is obstructed by the truck so you can't see
13:01:05 11 anything. All I can see is two officers on the
13:01:07 12 driver's side of that vehicle. That's it.

13:01:10 13 Q. When he was standing or walking in the
13:01:13 14 middle of the street, was he doing anything
13:01:15 15 threatening to the officers?

13:01:17 16 MS. HUGGINS: Form.

13:01:18 17 THE WITNESS: No.

13:01:18 18 BY MR. DAVENPORT:

13:01:19 19 Q. Okay. Based on what you saw on that
13:01:21 20 video?

13:01:21 21 A. Based on what I saw on that
13:01:25 22 grainy-quality video, yes.

13:01:26 23 Q. Okay. Now, as an officer, do you ever

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13:01:31 1 use surveillance footage when you're at a crime
13:01:34 2 scene?

13:01:35 3 **A.** If that individual has footage, yes.
13:01:42 4 If the owner has access to it, I will view it, but
13:01:45 5 it's pertaining on a particular crime.

13:01:48 6 You would have to like specify what type of
13:01:51 7 view you want me to talk about, but yes, I have
13:01:54 8 used surveillance videos in the past.

13:01:57 9 **Q.** Okay. Have you ever let's say gone to
13:02:00 10 a gas station to respond to a potential crime and
13:02:03 11 the gas station owner has surveillance cameras that
13:02:06 12 are set up?

13:02:07 13 **A.** Yes.

13:02:08 14 **Q.** Okay. And how would you say the
13:02:11 15 quality of those videos compares to this video?

13:02:14 16 **MS. HUGGINS:** Form.

13:02:16 17 **THE WITNESS:** Gas stations, some of them, I
13:02:18 18 mean, they're not really good quality and others,
13:02:21 19 they're really fine quality, so.

13:02:24 20 I mean, it depends on whether or not they
13:02:27 21 want to spend money on a top-notch security system.
13:02:30 22 I mean, I've seen some that are really good quality
13:02:33 23 and I've seen a lot that are not that great.

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13:02:35 1 **BY MR. DAVENPORT:**

13:02:36 2 **Q.** Okay. Do you ever watch the
13:02:40 3 surveillance footage with the gas station owner?

13:02:42 4 **A.** Yes, I have, actually.

13:02:43 5 **Q.** Okay. Have you watched surveillance
13:02:45 6 footage with a gas station owner who has a
13:02:48 7 lower-quality surveillance camera?

13:02:50 8 **A.** I have.

13:02:51 9 **MS. HUGGINS:** Form.

13:02:51 10 **BY MR. DAVENPORT:**

13:02:51 11 **Q.** And when you're watching that
13:02:53 12 surveillance footage, do you typically tell the gas
13:02:57 13 station owner that they're low-quality grainy video
13:02:59 14 that can't -- you can't see anything that's
13:03:01 15 happening in the video?

13:03:02 16 **MS. HUGGINS:** Form.

13:03:02 17 **THE WITNESS:** If it's something that's
13:03:04 18 not -- if it's a video that doesn't have that much
13:03:06 19 clarity, that's something that I can't use because
13:03:09 20 I'm going to need something that actually has a
13:03:10 21 specific item on that person.

13:03:11 22 So if he shows me a video of someone grainy
13:03:15 23 and stuff like that, that's nothing I can go

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13:03:17 1 forward with.

13:03:17 2 Maybe if that video shows a -- like a
13:03:19 3 colored shirt or something like that, that's
13:03:20 4 something to go on.

13:03:21 5 And then for like be on the lookout for this
13:03:27 6 individual, if it's something that's low quality,
13:03:28 7 to me, it's not that reliable because it's -- it's
13:03:31 8 low quality. It's not that good.

13:03:33 9 **BY MR. DAVENPORT:**

13:03:33 10 **Q.** But you still watch it and you try to
13:03:35 11 decipher as much as you can from that video, you
13:03:38 12 don't just blanketly say that it's low-quality
13:03:41 13 grainy video. Correct?

13:03:43 14 **A.** Yeah, I --

13:03:43 15 **MS. HUGGINS:** Form.

13:03:44 16 **THE WITNESS:** -- do. I still watch it. I
13:03:45 17 mean, you can pretty much put everything in place,
13:03:48 18 but in regards to like a situation that you're
13:03:50 19 trying to get me to explain in regards to an
13:03:53 20 incident with him and the officers, I don't see
13:03:55 21 anything because it's obstructed by that truck.

13:03:57 22 **BY MR. DAVENPORT:**

13:03:57 23 **Q.** Right.

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13:03:58 1 **A.** So I can't see whether or not there was
13:04:00 2 an incident or something that happened because
13:04:02 3 that's me basing it on what I'm seeing on this
13:04:04 4 video.

13:04:05 5 **Q.** But I also asked the question of did
13:04:08 6 you see the individual do anything threatening when
13:04:10 7 he was not obstructed by the truck, correct?

13:04:13 8 **A.** No, because I --

13:04:14 9 **MS. HUGGINS:** Form.

13:04:15 10 **THE WITNESS:** -- can't really attest to
13:04:16 11 that, too, because I wasn't on the scene. So I
13:04:18 12 don't know whether or not his demeanor was a
13:04:20 13 threatening manner.

13:04:22 14 So I can't attest to that, but on this
13:04:24 15 video, I don't see it, but it's a different
13:04:27 16 perspective if you're officers on the scene, which
13:04:30 17 I can't attest to because I wasn't there.

13:04:32 18 **BY MR. DAVENPORT:**

13:04:32 19 **Q.** And that's all I'm asking you, just
13:04:33 20 based on what you see on this video just so that
13:04:35 21 we're clear, you know. I don't want you to attest
13:04:36 22 to what the officer saw --

13:04:36 23 **A.** Right.

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13:04:37 1 Q. -- I just want you to say --

13:04:38 2 A. Yeah.

13:04:38 3 Q. -- what you see on this video.

13:04:40 4 A. Yeah.

13:04:41 5 Q. Do you see this video do anything
13:04:42 6 threatening to any of the officers besides the time
13:04:45 7 that he is obstructed by the vehicle?

13:04:47 8 MS. HUGGINS: Form. You're asking for his
13:04:48 9 opinion of the video.

13:04:50 10 MR. DAVENPORT: No, I'm asking does he see
13:04:52 11 anything on the video that shows this individual
13:04:54 12 doing anything threatening.

13:05:00 13 MS. HUGGINS: Form objection. It's not --
13:05:04 14 it's been asked and answered several times.

13:05:06 15 THE WITNESS: Yeah, I already touched base
13:05:07 16 on that. This video that I'm viewing, no, I don't
13:05:11 17 see anything threatening, but like I said, there's
13:05:14 18 different perspectives from the person who was
13:05:16 19 actually there in that vehicle.

13:05:18 20 I mean, it's totally different from what
13:05:19 21 they see and what I see on video, but to answer
13:05:21 22 your question, I don't see anything threatening
13:05:23 23 from this video from my point of view sitting in

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13:05:26 1 this chair.

13:05:26 2 **BY MR. DAVENPORT:**

13:05:26 3 **Q.** Okay. Thank you. That was the
13:05:28 4 question that I asked.

13:05:29 5 Did you see anything -- well, do you recall
13:05:38 6 seeing the individual that the car collided with?

13:05:42 7 **MS. HUGGINS:** Form. Just at what time frame
13:05:45 8 are you talking about?

13:05:45 9 **THE WITNESS:** Right.

13:05:46 10 **BY MR. DAVENPORT:**

13:05:47 11 **Q.** Well, it was at the beginning of this
13:05:48 12 video. Do you recall seeing an individual where a
13:05:51 13 car collided with an individual?

13:05:54 14 **MS. HUGGINS:** Form.

13:05:54 15 **THE WITNESS:** On this video right here or
13:05:56 16 are you talking about me at that date and time?

13:05:59 17 **BY MR. DAVENPORT:**

13:05:59 18 **Q.** I'm saying what you're seeing right
13:06:01 19 here on this video.

13:06:02 20 **A.** Did I see him colliding with the
13:06:04 21 vehicle?

13:06:04 22 **Q.** Well, did you see an individual and a
13:06:06 23 car collide with each other?

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13:06:07 1 **A.** Yes.

13:06:08 2 **Q.** Okay. And we can just replay it really
13:06:11 3 quickly.

13:06:18 4 **MS. HUGGINS:** I'm not sure why you're
13:06:20 5 replaying it. He just answered your question.

13:06:21 6 **THE WITNESS:** Yeah, I'm getting --

13:06:21 7 **MR. DAVENPORT:** Well, it seems that there's
13:06:23 8 some confusion over what we're talking about, so I
13:06:25 9 want to make sure that we're absolutely crystal
13:06:28 10 clear on what we're seeing.

13:06:29 11 **MS. HUGGINS:** He asked if are you talking
13:06:30 12 about the day and time or the video and you said
13:06:32 13 the video. And then he answered your question
13:06:35 14 directly. We can read it back.

13:06:36 15 **MR. DAVENPORT:** I just don't understand why
13:06:38 16 we just can't play the video and just that way, we
13:06:40 17 can have him refreshed and watch the video.

13:06:40 18 **MS. HUGGINS:** Because that's asking and
13:06:42 19 answering a question repeatedly.

13:06:43 20 **MR. DAVENPORT:** Okay. I'm going to play the
13:06:45 21 video.

13:06:57 22 **BY MR. DAVENPORT:**

13:06:58 23 **Q.** Okay. Now, on the video, did you just

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13:07:06 1 see a car and a person collide together?

13:07:08 2 **A.** Yes.

13:07:08 3 **MS. HUGGINS:** Form.

13:07:09 4 **THE WITNESS:** On the video, I seen the
13:07:10 5 person and the car collide with each other.

13:07:13 6 **BY MR. DAVENPORT:**

13:07:13 7 **Q.** Based on what you saw in the video, did
13:07:15 8 you see a crime occur?

13:07:16 9 **MS. HUGGINS:** Form. That's definitely an
13:07:17 10 opinion question.

13:07:18 11 **MR. DAVENPORT:** Well, he's an officer. He
13:07:20 12 can certainly testify as to whether based on what
13:07:22 13 he sees in this video actually if he thinks that a
13:07:25 14 crime just occurred.

13:07:26 15 **THE WITNESS:** Well, based on this video --

13:07:27 16 **MS. HUGGINS:** No, no. No, no. Wait a
13:07:28 17 minute. That is an opinion question.

13:07:32 18 **MR. DAVENPORT:** He's watching a video, so he
13:07:34 19 can provide factually if he thinks that a -- that a
13:07:37 20 crime just occurred when a car and an individual
13:07:40 21 were struck together.

13:07:43 22 If you want to instruct him not to answer
13:07:44 23 it, I'll just -- I'll preserve it for the record

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13:07:46 1 and we'll bring him back in. That's perfectly
13:07:49 2 fine.

13:07:49 3 **MS. HUGGINS:** Your question is if watching a
13:07:51 4 video he is able to say whether he observed a crime
13:07:54 5 take place?

13:07:55 6 **MR. DAVENPORT:** Yeah. Based on what he just
13:07:56 7 saw, was there any criminal action that took place.

13:07:59 8 **MS. HUGGINS:** On the part of who?

13:08:02 9 **MR. DAVENPORT:** Well, I don't know. You
13:08:05 10 tell me.

13:08:06 11 **MS. HUGGINS:** I'm objecting -- I'm objecting
13:08:09 12 on the -- to the form of the question and that it's
13:08:12 13 asking for an opinion of the video that clearly
13:08:16 14 speaks for itself.

13:08:17 15 So I mean, I want to get this over with, so
13:08:20 16 he can answer this, but I'm...

13:08:23 17 **MR. DAVENPORT:** You can preserve your
13:08:25 18 objection.

13:08:26 19 **BY MR. DAVENPORT:**

13:08:26 20 **Q.** Do you think a crime occurred based on
13:08:28 21 what you just saw?

13:08:29 22 **A.** In viewing this video, no, I don't
13:08:33 23 think a crime occurred because I'm just getting a

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13:08:36 1 little bit of it from this video.

13:08:38 2 If you asked me if I was there, yeah, it
13:08:40 3 would be a totality different opinion. But from
13:08:43 4 viewing this video right here, no, I do not see a
13:08:46 5 crime being occurred.

13:08:48 6 But that's all I have, so you can't ask me a
13:08:52 7 question on whether something has been like committed
13:08:56 8 just by seeing this little snippet of a video.

13:08:59 9 Q. Okay. At this point of the video, do
13:09:01 10 you see a second police car that's in the video?

13:09:03 11 A. No, I don't see one.

13:09:06 12 Q. Okay. Do you know who these two
13:09:36 13 officers are that are walking back toward the
13:09:38 14 scene?

13:09:38 15 A. No, I do not know them.

13:09:40 16 Q. Do you have any reason to believe that
13:09:42 17 they are not Officer Moriarity and Officer Schultz?

13:09:46 18 A. They're wearing the same colors as the
13:09:49 19 officers that got out of that Tahoe, that Chevy
13:09:51 20 Tahoe, so I'm assuming they're officers, too.

13:09:53 21 Q. Okay. But do you have any reason to
13:09:56 22 believe that they're not Officer Schultz and
13:09:58 23 Officer Moriarity, the officers that were walking

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13:10:00 1 down the street?

13:10:00 2 **A.** That, I can't tell you because you
13:10:02 3 can't get a look at their faces on the video.

13:10:04 4 **Q.** My question is do you have any reason
13:10:06 5 to believe that they are not those two individuals?

13:10:08 6 **A.** No.

13:10:08 7 **MS. HUGGINS:** And form.

13:10:08 8 **THE WITNESS:** No.

13:10:09 9 **MS. HUGGINS:** He answered your question.

13:10:10 10 **THE WITNESS:** No.

13:10:11 11 **BY MR. DAVENPORT:**

13:10:12 12 **Q.** Okay. Thank you. Does it appear that
13:10:22 13 this individual may have been arrested or detained
13:10:24 14 at this time?

13:10:25 15 **A.** Like I said earlier, I don't know
13:10:27 16 whether or not he was handcuffed. All I see is
13:10:29 17 just two officers walking to that gentleman.

13:10:32 18 **Q.** Okay. Based on what you see on
13:10:34 19 Exhibit 4-A, was this individual arrested?

13:10:44 20 **A.** Yes.

13:10:46 21 **Q.** Okay. And what tells you that?

13:10:48 22 **A.** The CB, central booking. The CB on
13:10:53 23 this document here.

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13:10:55 1 Q. Did you also discern that from the
13:10:58 2 disposition that says P1375 crime report?

13:11:01 3 A. Well, doing a P1375 crime report
13:11:04 4 doesn't constitute an arrest because you do it
13:11:06 5 without even doing no arrests. What got me to that
13:11:11 6 conclusion was CB.

13:11:14 7 Q. Okay. What times would you do a
13:11:16 8 criminal report without arresting or detaining
13:11:19 9 somebody?

13:11:19 10 A. What time would you do it?

13:11:21 11 Q. What instances.

13:11:22 12 A. Every single call that requires an
13:11:25 13 incident that a crime did occur. So an example, a
13:11:30 14 broken window, you could do it. Harassment, phone
13:11:35 15 harassment. There's many outcomes for you to do
13:11:37 16 the 1375.

13:11:39 17 Q. Okay. As you sit here today, do you
13:11:50 18 know what Mr. Kistner was charged with on January 1st
13:11:53 19 of 2017?

13:11:54 20 A. No, I do not.

13:11:58 21 Q. Would you believe me if I told you that
13:12:00 22 he was charged with a felony for what happened on
13:12:02 23 January 1st of 2017?

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13:12:04 1 **A.** It's not that I don't believe you, it's
13:12:06 2 that I don't know what he's been charged with.
13:12:09 3 That's up to the officers, whether or not they want
13:12:11 4 to charge a specific crime to an individual, but
13:12:15 5 whatever they charge is what they charge.

13:12:17 6 **Q.** Based on what you saw on that video,
13:12:20 7 did a felony occur?

13:12:21 8 **MS. HUGGINS:** Form. Same -- same objection
13:12:24 9 as to calling for opinion testimony.

13:12:26 10 **THE WITNESS:** That, I can't tell you.

13:12:27 11 **BY MR. DAVENPORT:**

13:12:28 12 **Q.** Based on what you saw on the video --

13:12:30 13 **A.** Based on what I saw, no.

13:12:32 14 **Q.** Okay.

13:12:33 15 **A.** But it's just video, there's more to
13:12:35 16 it, so. And I wasn't there, so I wouldn't know.

13:12:38 17 **Q.** Are you familiar with the crime
13:12:45 18 criminal mischief in the third degree?

13:12:47 19 **A.** I am.

13:12:48 20 **Q.** Okay. Do you know the elements that
13:12:51 21 are required for the crime of criminal mischief in
13:12:55 22 the third degree?

13:12:56 23 **A.** It's damage over a specified amount. I

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13:13:00 1 can't recall what amount. I believe it's \$1,500.

13:13:05 2 Q. So do you know if -- what the
13:13:13 3 designation of that crime is? Is it a felony, a
13:13:15 4 violation, a misdemeanor?

13:13:17 5 A. That, I can't tell you unless I have
13:13:18 6 the penal law book in front of me.

13:13:20 7 Q. Okay. So I'm going to show you what's
13:13:27 8 been marked as Exhibit 17.

13:13:35 9 A. Okay.

13:13:36 10 Q. Do you recognize this document?

13:13:38 11 A. I do.

13:13:39 12 Q. And what do you recognize it to be?

13:13:42 13 A. It's the charge, what they are charging
13:13:45 14 the defendant.

13:13:47 15 Q. Okay. Do you see in the part at the
13:13:52 16 very top -- well, close to the top where it says
13:13:55 17 criminal mischief third with damages greater than
13:14:04 18 250?

13:14:05 19 A. I do see that.

13:14:06 20 Q. Okay. Does that indicate to you that
13:14:09 21 the damage must be in excess of \$250?

13:14:13 22 A. Yes.

13:14:14 23 Q. So that would be the threshold amount

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13:14:16 1 that's required?

13:14:17 2 **A.** Yes. For that penal law charge, that's
13:14:21 3 correct.

13:14:21 4 **Q.** Okay. Now, do you see where it
13:14:26 5 describes the damage that was done to the vehicle
13:14:29 6 to support this criminal charge?

13:14:33 7 **A.** Driver's side mirror and driver's side
13:14:36 8 mirror of patrol vehicle. That's what they have
13:14:39 9 listed. And it's causing the mirror to be
13:14:43 10 dislodged from the vehicle and also causing the
13:14:46 11 driver's side window to malfunction.

13:14:49 12 **Q.** Okay. Do you remember looking at the
13:14:57 13 vehicle that was parked next to you on the day of
13:14:59 14 the incident?

13:14:59 15 **A.** No, I don't recall.

13:15:00 16 **Q.** Do you recall seeing a mirror that was
13:15:03 17 dislodged on any of the vehicles?

13:15:04 18 **A.** I don't recall.

13:15:06 19 **Q.** Did any of the officers complain about
13:15:14 20 a window not being able to function properly on
13:15:17 21 this date?

13:15:17 22 **A.** I don't recall.

13:15:21 23 **Q.** When you -- have you ever sent one of

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13:15:27 1 your patrol cars in for service?

13:15:28 2 **A.** Yes, I have.

13:15:29 3 **Q.** Okay. Do you ever review those

13:15:33 4 documents that -- that has to do with the car

13:15:37 5 repair?

13:15:37 6 **A.** I do. The person who is taking the
13:15:39 7 vehicle out to the garage has to fill out a form.

13:15:42 8 You have to do like your own personal inspection of
13:15:45 9 it, so yes.

13:15:48 10 **Q.** Okay. So you being the person that's
13:15:50 11 taking the vehicle also has to complete a form for
13:15:53 12 what needs to be completed?

13:15:54 13 **A.** Yes.

13:15:55 14 **Q.** Okay.

13:16:14 15 **MR. DAVENPORT:** Now, I don't believe that we
13:16:16 16 received that form from Ms. Velasquez on McDermott,
13:16:20 17 so to the extent that that form does exist, we are
13:16:22 18 just putting on the record that we are requesting
13:16:24 19 the document that was filled out when they took the
13:16:26 20 car in for service.

13:16:33 21 **MS. HUGGINS:** So that was a part of your
13:16:35 22 discovery demand and there was a response
13:16:37 23 indicating that there's no such form.

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13:16:39 1 **MR. DAVENPORT:** Okay.

13:16:39 2 **BY MR. DAVENPORT:**

13:16:41 3 **Q.** Is that a requirement, for officers to
13:16:43 4 fill out that form?

13:16:44 5 **A.** To my understanding, yes.

13:16:46 6 **Q.** How often do you take your car in for
13:16:49 7 service in a given year?

13:16:51 8 **A.** Generally, I take my patrol vehicle in
13:16:54 9 for an oil change. If there's something that
13:16:58 10 occurs, I document it and then take it to the
13:17:01 11 garage. And they service it for whatever I wrote
13:17:05 12 it up for.

13:17:06 13 **Q.** Okay. But my question is do you have a
13:17:10 14 rough estimate for how many times in a given year
13:17:13 15 you would take your patrol vehicle in?

13:17:14 16 **A.** I would say four to six times a year.

13:17:16 17 **Q.** And each those four to six times, you
13:17:18 18 would be expected to fill out a form when taking it
13:17:22 19 into service?

13:17:22 20 **A.** Well, I do, yes.

13:17:23 21 **Q.** Okay. Are there any circumstances or
13:17:29 22 instances that you would take your patrol vehicle
13:17:31 23 in for service where you would not fill out that

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13:17:35 1 form?

13:17:36 2 **A.** Me, I fill it out whenever I go to the
13:17:38 3 garage whether I need a new tire replaced or this
13:17:41 4 or that. That's me.

13:17:43 5 In regards to other officers, I don't know
13:17:45 6 what their preference is. But I'm all about paper
13:17:49 7 details, so I have to have something documented.

13:17:52 8 **Q.** Okay. The Dodge Charger that you were
13:17:57 9 driving on January 1st, 2017, is that the car that
13:18:00 10 you typically drive?

13:18:01 11 **A.** Yes.

13:18:01 12 **Q.** Okay. Is that the car that you also
13:18:05 13 typically take in for service and repair?

13:18:07 14 **A.** Yes.

13:18:07 15 **Q.** Okay. Now, I understand that there may
13:18:13 16 be days where you don't specifically drive this
13:18:15 17 vehicle, but has car number 625 generally been the
13:18:20 18 car that you have driven from January 1st, 2017, to
13:18:24 19 today?

13:18:25 20 **A.** I don't drive 625 anymore.

13:18:29 21 **Q.** Okay. What car do you drive?

13:18:31 22 **A.** 810, Charger 810.

13:18:34 23 **Q.** And when approximately did you switch

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13:18:37 1 over to the Charger 810?

13:18:39 2 A. I can't give you -- I don't know. I
13:18:43 3 don't recall when I took over that. It could be
13:18:46 4 two years.

13:18:48 5 Q. Okay.

13:18:50 6 A. Because the designators on the vehicle
13:18:53 7 like 625, six being 16, so that's the year of the
13:18:57 8 car. So 810 is -- 18 was when the vehicle was
13:19:02 9 manufactured.

13:19:03 10 Q. Okay.

13:19:05 11 A. But, yeah.

13:19:11 12 Q. So then since car 625 would have been
13:19:15 13 in 2016, the 2016 model, from 2016 to 2018, that
13:19:18 14 was your primary vehicle, was 625?

13:19:21 15 A. That was it, but on patrol, you're not
13:19:24 16 assigned like -- there's a preference of a vehicle
13:19:27 17 that you want.

13:19:28 18 625 was the vehicle because I took care of
13:19:31 19 it. When that was out of service, that vehicle,
13:19:34 20 you pretty much had whatever what was left on the
13:19:38 21 lot.

13:19:38 22 So it could be a Tahoe that you get one day
13:19:40 23 and it can be like a Crown Vic the next day and

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13:19:42 1 stuff because you're just waiting for your car to
13:19:45 2 come back from being serviced.

13:19:47 3 So you're not assigned a particular car,
13:19:49 4 it's just you have a preference for that one
13:19:51 5 vehicle.

13:19:52 6 Q. Okay. Being that car 625 was your
13:19:58 7 preference, that was generally the car that you
13:20:00 8 drove, though, from 2016 to 2018?

13:20:02 9 A. That's correct.

13:20:03 10 Q. Okay. And also it's generally your
13:20:05 11 understanding that every time that you take -- took
13:20:07 12 in car 625 for service, you filled out a form
13:20:11 13 before the service actually took place?

13:20:13 14 A. That's correct.

13:20:14 15 Q. Okay. Would it be your expectation
13:20:19 16 that this type of damage that was caused to a
13:20:21 17 vehicle would have been filled out on some type of
13:20:25 18 form?

13:20:25 19 MS. HUGGINS: Form.

13:20:26 20 THE WITNESS: On my -- my expectations, yes,
13:20:29 21 because I will take care of it and that's me. I
13:20:32 22 can't speak on other officers and how they do
13:20:34 23 things, but if it was me, yes.

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13:20:37 1 **BY MR. DAVENPORT:**

13:20:37 2 **Q.** Now, are your expectations shared with
13:20:40 3 your supervisor?

13:20:42 4 **A.** They're aware of my expectations and
13:20:44 5 they know how I operate, so yes, they assume
13:20:49 6 nothing but the best with me.

13:20:51 7 **Q.** Okay. Is it your -- well, who was your
13:20:54 8 supervisor?

13:20:54 9 **A.** Anthony McHugh and Jenny Velez.

13:20:59 10 **Q.** Okay. Now, does your supervisor expect
13:21:04 11 other officers in the C District to fill out the
13:21:09 12 forms that are required for the necessary repairs?

13:21:11 13 **MS. HUGGINS:** Form.

13:21:14 14 **THE WITNESS:** Every officer?

13:21:15 15 **MS. HUGGINS:** That question calls for
13:21:16 16 speculation.

13:21:16 17 **MR. DAVENPORT:** No, I mean, he's a
13:21:17 18 C District officer. He knows what a supervisor's
13:21:20 19 expectations are.

13:21:20 20 **THE WITNESS:** It's not just on the
13:21:21 21 expectations of the supervisors, it's on the
13:21:25 22 officer itself. Like you have the manual
13:21:28 23 procedures and you have to like follow pretty much

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13:21:30 1 what they state.

13:21:31 2 It's not up to the supervisors to come up
13:21:33 3 behind your back and say, hey, make sure you take
13:21:37 4 care of this and that. You as an officer have to
13:21:40 5 take it upon yourself to take care of that issue.

13:21:43 6 Q. So would you face any discipline if you
13:21:46 7 didn't fill out the necessary paperwork for these
13:21:49 8 repairs?

13:21:49 9 A. Absolutely, yes.

13:21:50 10 Q. And who would discipline you?

13:21:52 11 A. Internal affairs.

13:21:53 12 Q. Okay. Not your supervisor?

13:21:55 13 A. The supervisor will be aware of the
13:21:58 14 incident and they will be brought up to internal
13:22:03 15 affairs, but it's the person who did the
13:22:05 16 infraction, their immediate supervisor. Then it
13:22:08 17 goes up the chain. So they're aware of the
13:22:10 18 situation, too.

13:22:10 19 Q. Okay. Would you ever have any sort of
13:22:13 20 a conference with your lieutenants, Anthony McHugh
13:22:18 21 or Jenny Velez, if you weren't meeting the
13:22:20 22 expectations that were expected of you as an
13:22:22 23 officer?

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13:22:23 1 **MS. HUGGINS:** Form. You can answer.

13:22:24 2 **THE WITNESS:** Well, if an incident did not
13:22:26 3 occur, then you're not going to have a conference.
13:22:29 4 Generally, the only time you're talking to a
13:22:32 5 supervisor in regards to -- I don't know. What
13:22:33 6 situation do you want me to talk about?

13:22:35 7 **BY MR. DAVENPORT:**

13:22:35 8 **Q.** I'm just talking about filling out
13:22:38 9 paperwork for car repairs.

13:22:39 10 **A.** Yes, because it goes to the supervisor
13:22:40 11 and they have to sign it, too. It could be my
13:22:43 12 immediate supervisors or it could be the person who
13:22:45 13 is running the police garage. But it's -- my
13:22:49 14 signature is not the only signature that goes on
13:22:51 15 that document.

13:22:52 16 **Q.** Okay. So the supervisor would also put
13:22:54 17 their signature on the form for a repair?

13:22:57 18 **A.** Yes. Because they will see everything,
13:22:59 19 yes.

13:22:59 20 **Q.** Okay. Now, as an officer, do you
13:23:07 21 typically document evidence that's required to
13:23:11 22 prove a crime that you accuse someone with?

13:23:13 23 **A.** Yes.

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13:23:13 1 **Q.** Okay. In the instance of accusing
13:23:17 2 somebody of intentionally dislodging a driver's
13:23:21 3 side mirror and causing damage to the malfunction
13:23:25 4 or function of the driver's side mirror(sic), how
13:23:28 5 would you document that evidence?

13:23:30 6 **MS. HUGGINS:** Form.

13:23:32 7 **THE WITNESS:** Okay. For me in regards to
13:23:34 8 that, generally you have -- if it's vehicle --
13:23:37 9 damage done to your patrol vehicle, you have to
13:23:40 10 notify your supervisor.

13:23:41 11 And they will notify the accident
13:23:43 12 investigation unit. And they will come by and they
13:23:46 13 will take pictures and collect evidence.

13:23:50 14 **BY MR. DAVENPORT:**

13:23:51 15 **Q.** Would an officer ever be able to take
13:23:53 16 their own photographs to document it?

13:23:54 17 **A.** Well, it depends on that officer, but
13:23:56 18 if they want their phones taken away or whatever, I
13:24:00 19 mean, by all means they could do that.

13:24:02 20 But generally if they do do that, it's up to
13:24:05 21 them. But it's usually the specialized units that
13:24:07 22 will take the photos, not the officers.

13:24:12 23 **Q.** Okay. Why would the officer have to

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13:24:14 1 have their phone taken away if they took a
13:24:17 2 photograph?

13:24:17 3 **A.** I'm not saying --

13:24:17 4 **MS. HUGGINS:** Form.

13:24:18 5 **THE WITNESS:** -- per se. Generally, it's
13:24:21 6 the courts or whatever. I mean, if you have
13:24:22 7 something on your phone, then the Court will
13:24:25 8 subpoena that and grab your phone.

13:24:26 9 But it's -- it's more or less -- like I
13:24:29 10 said, I don't know what everyone else does, but for
13:24:32 11 me, I usually let our units take care of that and
13:24:36 12 let them collect the evidence.

13:24:38 13 **BY MR. DAVENPORT:**

13:24:39 14 **Q.** Okay. Are you aware of officers who
13:24:42 15 take photographs on their phone and use it as
13:24:44 16 evidence?

13:24:45 17 **A.** No, I'm not.

13:24:46 18 **Q.** Now, if you appeared in court and there
13:24:59 19 was no evidence to support the crime that you
13:25:01 20 accuse somebody with, how would that reflect on you
13:25:05 21 as an officer?

13:25:07 22 **MS. HUGGINS:** Form.

13:25:08 23 **THE WITNESS:** My opinion? If something like

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13:25:11 1 that didn't turn out the way I want it to turn out
13:25:14 2 in regards to a court case?

13:25:16 3 I mean, it's due process. It's the courts.
13:25:19 4 If the Court finds that the person is not guilty,
13:25:21 5 then I did my job, I did it to the best of my
13:25:24 6 ability, and then I just move on. I don't hold any
13:25:27 7 grudges or anything like that.

13:25:28 8 **BY MR. DAVENPORT:**

13:25:28 9 **Q.** What if you accuse somebody of
13:25:30 10 something and you didn't have any evidence to
13:25:31 11 support the crime that you charged that individual
13:25:34 12 with, how would that reflect on you?

13:25:35 13 **A.** It wouldn't --

13:25:35 14 **MS. HUGGINS:** Form.

13:25:36 15 **THE WITNESS:** -- have reflected --

13:25:39 16 **MS. HUGGINS:** And that calls for
13:25:39 17 speculation. What do you mean, how -- what do you
13:25:41 18 mean by the phrase "how it reflects on you"?

13:25:43 19 **BY MR. DAVENPORT:**

13:25:44 20 **Q.** Well, would a supervisor have to talk
13:25:45 21 to you about why you brought charges against
13:25:48 22 somebody without evidence?

13:25:49 23 **MS. HUGGINS:** Form. Calls for speculation.

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13:25:51 1 You can answer.

13:25:52 2 **THE WITNESS:** I wouldn't know because I've
13:25:53 3 never been in that situation.

13:25:55 4 **BY MR. DAVENPORT:**

13:25:55 5 **Q.** Are you aware of officers who have been
13:25:57 6 in that situation?

13:25:57 7 **A.** I wouldn't know, either.

13:25:59 8 **Q.** Do you not talk with other officers?

13:26:01 9 **A.** I do talk to other officers but I don't
13:26:03 10 talk in regards to stuff at work, incidents that
13:26:10 11 occurred at work.

13:34:39 12 (A recess was then taken.)

13:34:39 13 **BY MR. DAVENPORT:**

13:34:47 14 **Q.** So showing you what has been marked as
13:34:50 15 Exhibit 11, it is the fourth video segment. The
13:34:54 16 number is 06_20170101105233. The timestamp is one
13:35:08 17 minute and 44 seconds into this video segment.

13:35:15 18 Now, Officer Santana, I just want you to
13:35:18 19 tell me, do you see all five officers currently
13:35:21 20 standing in a group?

13:35:22 21 **A.** Yes.

13:35:22 22 **Q.** Okay. Now, does it appear that the
13:35:32 23 officers are breaking from the group and walking

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13:35:34 1 back towards their respective vehicles?

13:35:37 2 **A.** Yes.

13:35:38 3 **Q.** Do you see one officer who is currently
13:35:49 4 standing in the middle of the street at timestamp
13:35:52 5 two minutes and four seconds into the video
13:35:56 6 segment?

13:35:56 7 **A.** Yes.

13:35:57 8 **Q.** Okay. I just want you to generally
13:35:59 9 describe what you see this officer doing from this
13:36:02 10 moment forward.

13:36:04 11 **MS. HUGGINS:** Form.

13:36:07 12 **THE WITNESS:** He's standing in the middle of
13:36:09 13 the street.

13:36:12 14 **BY MR. DAVENPORT:**

13:36:12 15 **Q.** What reason do you think that she was
13:36:14 16 standing in front of the car?

13:36:16 17 **MS. HUGGINS:** Form.

13:36:17 18 **THE WITNESS:** I can't tell you. I don't
13:36:18 19 know.

13:36:19 20 **BY MR. DAVENPORT:**

13:36:19 21 **Q.** Is it possible that she was taking a
13:36:21 22 photograph?

13:36:21 23 **MS. HUGGINS:** Form.

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13:36:22 1 **THE WITNESS:** You can't tell from that
13:36:24 2 video.

13:36:24 3 **BY MR. DAVENPORT:**

13:36:27 4 **Q.** Is it possible that she was taking a
13:36:29 5 photograph to document the damage to her vehicle?

13:36:31 6 **MS. HUGGINS:** Form.

13:36:32 7 **THE WITNESS:** I can't see a camera. I can't
13:36:36 8 see anything from this video. I can't see it.

13:36:38 9 **BY MR. DAVENPORT:**

13:36:38 10 **Q.** Okay. Do you recall if anybody told
13:36:42 11 that officer to take a photograph of the vehicle?

13:36:44 12 **A.** I don't recall.

13:36:46 13 **Q.** Okay. Do you recall anything about any
13:36:50 14 of those discussions with any of those officers
13:36:53 15 that day?

13:36:54 16 **A.** No, I don't recall.

13:36:55 17 **Q.** All right. Do you recall any
13:37:07 18 individuals talking to any of the officers at the
13:37:11 19 scene?

13:37:12 20 **A.** No, I don't recall.

13:37:13 21 **Q.** Nobody from the apartment complex or
13:37:17 22 the houses that were nearby?

13:37:19 23 **A.** No, I don't recall.

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13:37:20 1 Q. Okay. Nobody was screaming from a
13:37:24 2 window or anything like that?

13:37:25 3 A. I don't recall.

13:37:27 4 Q. Do you recall if at any point any
13:37:31 5 pedestrian or anybody from a house said that we
13:37:33 6 have this on video?

13:37:34 7 A. No, I don't recall.

13:37:36 8 Q. Okay. Did you know at this time that
13:37:39 9 there was surveillance video that was focused on
13:37:43 10 where the officers were standing?

13:37:45 11 A. No.

13:37:46 12 Q. Did you come to learn of that fact at
13:37:48 13 any point on that day?

13:37:49 14 A. No.

13:37:51 15 Q. Did you come to learn of that fact at
13:37:53 16 any point before your deposition today?

13:37:55 17 A. No.

13:37:56 18 Q. Not even when you saw on the news story
13:37:59 19 that there was surveillance footage of everything
13:38:01 20 that happened?

13:38:02 21 A. Well, besides the news story, no.

13:38:04 22 Q. And then when you watched the video
13:38:06 23 this morning, correct?

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13:38:07 1 A. That's correct.

13:38:08 2 Q. And then when you watched the video for
13:38:10 3 your interrogatories?

13:38:10 4 A. That's correct.

13:38:11 5 Q. And at all those times, you knew that
13:38:13 6 there was surveillance footage of the incident on
13:38:15 7 that day?

13:38:16 8 A. That's correct, from viewing it.

13:38:17 9 Q. Okay. Thank you. I'm going to show
13:38:33 10 you what has been marked as Exhibit 18. Do you
13:38:42 11 recognize this document?

13:38:43 12 A. No, I do not.

13:38:44 13 Q. Do you know generally what this
13:38:47 14 document is used for?

13:38:49 15 A. No, I do not.

13:38:51 16 Q. Have you ever seen this document
13:38:52 17 before?

13:38:53 18 A. No, I haven't.

13:38:54 19 Q. Have you ever seen a general form of
13:38:56 20 this document?

13:38:56 21 A. No, I haven't.

13:38:57 22 Q. Okay. Do you have any reason to
13:39:00 23 believe that this is not a fleet management

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13:39:03 1 maintenance work order?

13:39:04 2 A. No.

13:39:05 3 Q. Okay. Who fills out this work order?

13:39:09 4 A. I do not know.

13:39:10 5 Q. Okay. But it's not the officers who
13:39:13 6 fill it out?

13:39:13 7 A. No.

13:39:14 8 Q. Do you think it's filled out by the
13:39:16 9 garage?

13:39:16 10 A. Probably filled out by the maintenance
13:39:19 11 work -- the worker within the maintenance shop.

13:39:21 12 Q. Okay. Does the City of Buffalo have
13:39:24 13 its own maintenance shop?

13:39:25 14 A. That, I can't tell you.

13:39:28 15 Q. Where do you take your car when it
13:39:30 16 needs to be repaired?

13:39:31 17 A. Seneca garage, but it's -- I don't know
13:39:35 18 if they work for the city or they're contracted
13:39:37 19 with the city. I don't know.

13:39:38 20 Q. Do you ever take your vehicle to any
13:39:40 21 other garage?

13:39:41 22 A. No.

13:39:43 23 Q. Okay. And that's where you've taken

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13:39:45 1 your vehicle to -- that's the garage that you've
13:39:49 2 taken your vehicle to since you started?

13:39:50 3 A. That's correct.

13:39:51 4 Q. Do you ever see other police vehicles
13:39:53 5 that are there at Seneca garage?

13:39:55 6 A. In regards to what? From different
13:39:57 7 agencies or?

13:39:58 8 Q. Specifically for the City of Buffalo.

13:40:00 9 A. No, just -- just our vehicles, anything
13:40:04 10 with the City of Buffalo.

13:40:05 11 Q. Okay. So it's more than just your
13:40:07 12 vehicle that goes to Seneca garage?

13:40:09 13 A. Yes, it's any city vehicle.

13:40:11 14 Q. Okay. So the form that you typically
13:40:13 15 fill out that you would give to the service garage
13:40:16 16 is different from this form?

13:40:18 17 A. Yes.

13:40:18 18 Q. Okay. Do you know what car number this
13:40:21 19 form refers to?

13:40:23 20 A. It refers to vehicle number 473.

13:40:27 21 Q. Okay. And then looking again at
13:40:29 22 Exhibit 16, who was driving vehicle number 473 on
13:40:34 23 January 1st of 2017?

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13:40:36 1 **A.** Officer McDermott and Officer Velez.

13:40:40 2 **Q.** Okay. Do you see on the service
13:40:44 3 information the date that this service took place?

13:40:50 4 **A.** January 5th of 2017.

13:40:53 5 **Q.** Okay. And do you see where it says
13:40:55 6 what the service was done right below it?

13:40:57 7 **A.** Cooling system.

13:40:58 8 **Q.** Okay. And then what about the line
13:41:00 9 right below that?

13:41:01 10 **A.** R&R water pump, serp belt.

13:41:15 11 (Discussion off the record.)

13:41:19 12 **BY MR. DAVENPORT:**

13:41:20 13 **Q.** Do you see anything that would indicate
13:41:21 14 that the driver's side mirror was fixed on this
13:41:24 15 date?

13:41:25 16 **A.** No.

13:41:25 17 **Q.** Okay. Anything that says that the
13:41:27 18 driver's side mirror was dislodged from the
13:41:29 19 vehicle?

13:41:30 20 **A.** No.

13:41:31 21 **Q.** Okay. Anything that talks about a
13:41:33 22 driver's side window malfunctioning?

13:41:42 23 **A.** No.

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13:41:42 1 Q. Okay. Did you ever speak to Ms. Velez
13:41:47 2 and Ms. McDermott about the condition of their
13:41:50 3 vehicle after January 1st of 2017?

13:41:52 4 A. No.

13:41:52 5 Q. Okay. Did they ever make any general
13:41:54 6 complaints about their vehicle after January 1st of
13:41:57 7 2017?

13:41:57 8 A. I would not know.

13:41:59 9 Q. Well, did they ever make any general
13:42:01 10 complaints to you?

13:42:02 11 A. No.

13:42:03 12 Q. Okay. How often do you talk to
13:42:06 13 Ms. McDermott and Ms. Velez?

13:42:07 14 A. Not often.

13:42:09 15 Q. Maybe once a week?

13:42:11 16 A. No.

13:42:12 17 Q. Okay. Less than once a week?

13:42:14 18 A. Yes.

13:42:15 19 Q. Once a month?

13:42:16 20 A. I don't know. Whenever I walk by, hi,
13:42:18 21 'bye and that's it, but we don't have
13:42:20 22 conversations.

13:42:20 23 Q. Okay. How many people are in your

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13:42:23 1 platoon for day shift?

13:42:25 2 A. Right now, 12, I believe.

13:42:28 3 Q. Of those 12 people, do you have anybody
13:42:33 4 that you speak to on a regular basis at work?

13:42:36 5 A. At work or outside of work?

13:42:39 6 Q. At work.

13:42:40 7 A. I talk to everybody that I work with.

13:42:42 8 Q. But regularly that you speak to them?

13:42:44 9 A. Yes.

13:42:45 10 Q. What do you define regularly as?

13:42:49 11 A. How many times -- it's pretty much just
13:42:52 12 basically in the morning when we arrive at work and
13:42:54 13 we have briefings and pretty much just -- usually
13:43:00 14 just how it's going and this and that, but that's
13:43:02 15 pretty much it, so just once.

13:43:04 16 Q. During those briefings, did Ms. McDermott
13:43:07 17 or Ms. Velez ever bring up complaints of their
13:43:10 18 after January 1st of 2017?

13:43:11 19 A. No.

13:43:12 20 Q. I'm going to show what's been marked as
13:43:43 21 Exhibit 9. Do you recognize that document?

13:43:48 22 A. Yes.

13:43:48 23 Q. What do you otherwise recognize it to

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13:43:50 1 be?

13:43:50 2 **A.** It's the case history.

13:43:52 3 **Q.** Okay. And what kind of information
13:43:53 4 goes on a case history?

13:43:55 5 **A.** Who did what in the incident.

13:43:56 6 **Q.** Okay. Do you see your name listed at
13:43:59 7 all on this case history?

13:44:00 8 **A.** No.

13:44:01 9 **Q.** Okay. Do officers who respond to a
13:44:05 10 call typically end up on a case history?

13:44:07 11 **A.** If they're assigned to that call, yes,
13:44:10 12 but it depends on the primary officer whether or
13:44:14 13 not they have them do a specific function with that
13:44:16 14 call.

13:44:17 15 **Q.** Okay. Are there only four officers who
13:44:27 16 are listed on this case history?

13:44:28 17 **A.** That's correct.

13:44:28 18 **Q.** Okay. And what is this case history
13:44:33 19 used for? What's the purpose?

13:44:34 20 **A.** The purpose of this case history is to
13:44:36 21 have it in one sheet who did what in that incident.
13:44:41 22 That's the main purpose of this.

13:44:42 23 **Q.** Okay. Is this something that's

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13:44:46 1 reviewed by anybody?

13:44:49 2 A. Generally this goes to the court
13:44:51 3 paperwork.

13:44:53 4 Q. Besides the courts, is there any other
13:44:55 5 officer supervisors who review this document?

13:44:57 6 A. Not that I'm aware of, no.

13:44:59 7 Q. So it's just mostly used for court
13:45:02 8 purposes then?

13:45:03 9 A. That's correct.

13:45:04 10 Q. Okay. And so it generally describes
13:45:06 11 the functions that took place for each of the
13:45:09 12 officers who responded to the incident?

13:45:11 13 A. That's correct.

13:45:50 14 Q. Do you still maintain a copy of the
13:45:52 15 complaint that was served upon you?

13:45:54 16 A. No.

13:45:56 17 Q. Where did you give that complaint to?
13:46:00 18 Who has it?

13:46:01 19 A. In regards to the copy that's given to
13:46:02 20 us?

13:46:03 21 Q. Uh-huh.

13:46:04 22 A. A shredder place.

13:46:08 23 Q. You guys shred the complaints?

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13:46:11 1 **A.** No, we have bins in the station house
13:46:13 2 where we recycle documentation. It's a locked bin
13:46:16 3 that -- I believe the company is called White
13:46:18 4 Mountain. I don't keep anything on file.

13:46:20 5 **MS. HUGGINS:** When you say complaint, just
13:46:22 6 to be clear, what are you referring to?

13:46:23 7 **MR. DAVENPORT:** The complaint that he was
13:46:24 8 served with when he was notified of this lawsuit.

13:46:26 9 **MS. HUGGINS:** Did you understand the
13:46:27 10 question to refer to that?

13:46:29 11 **THE WITNESS:** Yeah, whether or not I kept a
13:46:31 12 copy of this thing myself. My answer to that is
13:46:33 13 I'll view it and I'll go to it and I'll get rid of
13:46:37 14 that paperwork in that respective bin.

13:46:40 15 **BY MR. DAVENPORT:**

13:46:40 16 **Q.** So when you drop off the paperwork into
13:46:43 17 the bin, do you know what happens to it afterwards?

13:46:46 18 **A.** Well, it's up to the company and the
13:46:47 19 city. I'm assuming they destroy everything.

13:46:50 20 **Q.** What other types of paperwork do you
13:46:53 21 put into that bin?

13:46:53 22 **A.** Anything work related, any information.

13:46:58 23 **Q.** And how often are you putting documents

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13:47:00 1 into that bin?

13:47:01 2 **A.** Every day.

13:47:09 3 **Q.** Do you think that that may have been a
13:47:11 4 document that you would want to hold on to if you
13:47:14 5 were named in a lawsuit?

13:47:15 6 **A.** If I was named in a lawsuit, I would
13:47:17 7 assume that the city attorneys will have all that
13:47:21 8 documentation. I don't need to carry that with me.

13:47:25 9 **Q.** What happens if you wanted to go to
13:47:26 10 your own attorney besides the city attorney, would
13:47:29 11 you want to keep that complaint?

13:47:31 12 **MS. HUGGINS:** Form.

13:47:32 13 **THE WITNESS:** Absolutely.

13:47:37 14 **BY MR. DAVENPORT:**

13:47:38 15 **Q.** If you got rid of the document, would
13:47:40 16 there be another way of notifying a new attorney of
13:47:43 17 what the allegations are in that complaint?

13:47:45 18 **A.** That, I don't know the ins and outs of
13:47:48 19 that, so I'm not sure. It's got to be with the
13:47:51 20 city attorneys in their department.

13:47:54 21 **Q.** Is that something that's generally done
13:47:56 22 in the City of Buffalo, is recycle complaints that
13:48:00 23 are served upon their officers?

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13:48:02 1 A. Well, that's what I do. I don't know
13:48:04 2 what other officers do.

13:48:05 3 Q. How many lawsuits have you been named
13:48:08 4 in?

13:48:08 5 A. One.

13:48:11 6 Q. Just this one?

13:48:12 7 A. No, there's another one.

13:48:14 8 Q. So two then?

13:48:15 9 A. Yes.

13:48:16 10 Q. Okay. Do you know when the file date
13:48:22 11 was for that other lawsuit?

13:48:25 12 A. It's when I broke my arm in a
13:48:29 13 city-involved accident. I can't tell you the exact
13:48:31 14 year. I believe it's 2014.

13:48:36 15 Q. So was that a complaint that was filed
13:48:38 16 by you?

13:48:39 17 A. No. It was an insurance company trying
13:48:41 18 to go after me on behalf of their client.

13:48:45 19 Q. Okay.

13:48:56 20 A. Did you have a question about that?

13:48:59 21 Q. No, he can't ask questions. Don't
13:49:01 22 worry about it.

13:49:11 23 So after you were served with the complaint,

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13:49:13 1 did you read any of the allegations that were in
13:49:15 2 there?

13:49:15 3 **A.** No. The only thing I read was to
13:49:18 4 report to Corporation Counsel and that's pretty
13:49:21 5 much it.

13:49:22 6 **Q.** Okay. Did it give you like a date when
13:49:25 7 to report or anything like that?

13:49:26 8 **A.** Yes, there was a date and time given to
13:49:28 9 me.

13:49:28 10 **Q.** And then did you calendar it and make
13:49:30 11 that scheduled appointment?

13:49:32 12 **A.** Yeah, I kept it in my mailbox at work.
13:49:35 13 And then after I showed up, after I went, when I
13:49:39 14 came back to work, I used the recycling.

13:49:41 15 **MS. HUGGINS:** I think there's another
13:49:42 16 terminology confusion. Are you talking about the
13:49:45 17 court liaison notice to come and appear for court?

13:49:48 18 **THE WITNESS:** Yes, that's what he --

13:49:49 19 **MS. HUGGINS:** I think he's unsure what you
13:49:51 20 mean by complaint.

13:49:52 21 **MR. DAVENPORT:** Got you. Okay.

13:49:58 22 **MS. HUGGINS:** So when he said served with a
13:50:00 23 complaint, are you thinking of a court liaison

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13:50:03 1 document?

13:50:03 2 **THE WITNESS:** Yeah, serving me saying that
13:50:04 3 you have to show up for this and that. Is that
13:50:07 4 what you were talking about?

13:50:09 5 **BY MR. DAVENPORT:**

13:50:09 6 **Q.** No. So I'm talking about at the
13:50:14 7 initial stages of the lawsuit, were you ever
13:50:16 8 handed -- it was about a 60-page document that
13:50:20 9 would have had the allegations for this lawsuit as
13:50:23 10 well as a recording of what happened?

13:50:25 11 **A.** Thanks for clearing it up. No.

13:50:28 12 **Q.** You never received that document?

13:50:29 13 **A.** Never did.

13:50:30 14 **Q.** Are you aware if somebody at your
13:50:33 15 office received that document on your behalf?

13:50:35 16 **A.** No.

13:50:36 17 **Q.** Okay. But as you sit here today, you
13:50:39 18 have never seen that document before?

13:50:40 19 **A.** Never did.

13:50:42 20 **Q.** Okay. For the other lawsuit that you
13:50:49 21 were named in, did you ever review the allegations
13:50:51 22 in that complaint?

13:50:51 23 **A.** With my attorney I had, yes.

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13:50:54 1 Q. But you haven't done the same thing
13:50:56 2 here?

13:50:56 3 A. No.

13:50:59 4 Q. Do you know any of the details of
13:51:03 5 anything that happened on January 1st of 2017?

13:51:06 6 A. No.

13:51:07 7 MS. HUGGINS: Just to be clear since there
13:51:10 8 was confusion on terminology, when you were
13:51:13 9 referring to shredding a document, the document was
13:51:15 10 the court liaison notice?

13:51:16 11 THE WITNESS: Yes. That document stating
13:51:19 12 that I have to show up at court at a specific date
13:51:21 13 and time, that's what I'm talking about.

13:51:23 14 BY MR. DAVENPORT:

13:51:24 15 Q. But you've never reviewed the 60-page
13:51:27 16 complaint that initiated this lawsuit --

13:51:29 17 A. No.

13:51:30 18 Q. -- against you? Okay. But you did
13:51:34 19 review the complaint for the other incident that
13:51:37 20 you were involved in?

13:51:38 21 A. Yes.

13:51:38 22 Q. Okay. Did you keep that complaint?

13:51:42 23 A. No, I don't have it anymore.

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13:51:44 1 Q. Well, did you keep it at the time?

13:51:46 2 A. I didn't keep it but my attorney did.

13:51:48 3 Q. Okay. Did you also shred that

13:51:51 4 complaint?

13:51:51 5 A. Well, everything that I have, yes, I

13:51:53 6 do. I don't keep anything. I don't keep files.

13:51:56 7 Q. Okay. Have you ever been subjected to

13:52:06 8 an internal affairs investigation?

13:52:08 9 A. No.

13:52:10 10 Q. Not once?

13:52:12 11 A. No. I was a witness but I wasn't the
13:52:14 12 target.

13:52:14 13 Q. Okay. Were you a witness for this
13:52:17 14 incident that transpired on January 1st of 2017?

13:52:20 15 MS. HUGGINS: Form.

13:52:21 16 THE WITNESS: No, I don't recall.

13:52:23 17 BY MR. DAVENPORT:

13:52:23 18 Q. Were you ever interviewed or deposed by
13:52:26 19 anybody with internal affairs for this incident?

13:52:29 20 A. No.

13:52:29 21 Q. Okay. Are you aware of any officers
13:52:35 22 who were deposed or required to give statements as
13:52:39 23 witnesses for this incident?

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13:52:40 1 **MS. HUGGINS:** I'm going to object to that
13:52:43 2 under the language in the order to show cause.
13:52:48 3 That is very broad language there. I don't know
13:52:51 4 what it encompasses and I am --

13:52:53 5 **MR. DAVENPORT:** Well, I have a copy if you
13:52:54 6 want to look at it.

13:52:55 7 **MS. HUGGINS:** I have a copy as well with me.

13:52:56 8 **MR. DAVENPORT:** Okay.

13:52:56 9 **MS. HUGGINS:** The issue is that it's still
13:52:58 10 the subject of litigation and I don't believe the
13:53:00 11 Court has specifically ruled with regard to
13:53:04 12 deposition testimony.

13:53:07 13 **MR. DAVENPORT:** So I think on the safe side,
13:53:10 14 we should probably ask the questions. You can
13:53:11 15 object to it and then it will stricken from the
13:53:13 16 record.

13:53:14 17 **MS. HUGGINS:** Well, no. Here's the problem.
13:53:17 18 That says no public disclosure and that is a
13:53:20 19 lawsuit --

13:53:20 20 **MR. DAVENPORT:** For documents. It doesn't
13:53:22 21 say anything about deposition testimony. It also
13:53:24 22 doesn't say anything if you're involved -- Jim,
13:53:26 23 don't say anything.

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13:53:28 1 It doesn't say anything about if you are
13:53:30 2 named as a party in lawsuit. This is just talking
13:53:33 3 about general disclosure under Public Officers Law.
13:53:35 4 This is a lawsuit. You've been named in a lawsuit,
13:53:38 5 respectfully, sir.

13:53:39 6 So, you know, you can object to the
13:53:41 7 production of documents, I'm not -- I'm not asking
13:53:44 8 for any documents to be produced, but this does not
13:53:46 9 say anything about deposition testimony.

13:53:47 10 **MS. HUGGINS:** It says publicly disclosing
13:53:51 11 records --

13:53:52 12 **MR. DAVENPORT:** Documents.

13:53:53 13 **MS. HUGGINS:** Okay. The issue is that that
13:53:56 14 language is incredibly broad. I am fine if you ask
13:54:00 15 the questions. I'm not going to permit him to
13:54:02 16 answer them.

13:54:04 17 This is why I raised this earlier with you,
13:54:06 18 is that that -- if we run afoul of that, we are
13:54:18 19 subject to further suit by the PBA.

13:54:20 20 And I cannot put the city or this officer in
13:54:24 21 that position or myself in that position as a City
13:54:28 22 of Buffalo employee.

13:54:29 23 So I understand maybe you want to preserve

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13:54:31 1 the record by indicating what questions you wish to
13:54:34 2 ask, but my concern is him answering any of those
13:54:36 3 questions that may reveal the contents of records.

13:54:41 4 **MR. DAVENPORT:** Your concern is noted.

13:54:45 5 **MS. HUGGINS:** So in citing that order to
13:54:47 6 show cause, depending on what your question is, I
13:54:50 7 may instruct him not to answer it.

13:54:52 8 But it's only -- my concern is, is having --
13:54:56 9 having a verbal answer here inadvertently disclose
13:55:00 10 the contents of an investigation.

13:55:01 11 **MR. DAVENPORT:** Okay. Plaintiff preserves
13:55:03 12 his rights to be able to bring Mr. Santana back in
13:55:05 13 for a deposition to answer the questions that
13:55:07 14 counsel will, it seems --

13:55:07 15 **MS. HUGGINS:** And that's --

13:55:09 16 **MR. DAVENPORT:** -- object to.

13:55:10 17 **MS. HUGGINS:** And that's fine. On this
13:55:12 18 issue, specifically because of this order to show
13:55:15 19 cause, that is my concern.

13:55:16 20 **MR. DAVENPORT:** Okay. So I would just like
13:55:18 21 to say on the record that it says records. It does
13:55:22 22 not say anything about deposition testimony.

13:55:23 23 So plaintiff respectfully disagrees that

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13:55:27 1 this TRO has anything to do with this deposition
13:55:30 2 testimony here today.

13:55:30 3 And we will preserve that right to move
13:55:34 4 forward with asking Mr. Santana the questions that
13:55:37 5 we are about to ask in a further deposition.

13:55:40 6 **BY MR. DAVENPORT:**

13:55:41 7 **Q.** So Mr. Santana, are you aware of any
13:55:44 8 officers who were investigated or asked to provide
13:55:48 9 a statement as a witness by internal affairs for
13:55:50 10 this January 1st, 2017, incident?

13:55:52 11 **A.** No.

13:55:53 12 **Q.** Are you aware of the process that
13:56:02 13 internal affairs goes through for investigating
13:56:04 14 complaints against officers?

13:56:06 15 **A.** No.

13:56:07 16 **Q.** When you participated as a witness,
13:56:12 17 what was the outcome of that complaint?

13:56:15 18 **MS. HUGGINS:** Well, that, I am going to
13:56:17 19 object to. I don't know the answer to that
13:56:18 20 question, but you're saying what is the outcome of
13:56:21 21 the complaint. That could reveal --

13:56:23 22 **MR. DAVENPORT:** Because if it was
13:56:25 23 substantiated, then I would be able to ask him

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13:56:27 1 questions. This TRO has nothing to do with
13:56:30 2 substantiated complaints.

13:56:30 3 **MS. HUGGINS:** It says settled.

13:56:31 4 **MR. DAVENPORT:** Okay. Well, how do you
13:56:33 5 interpret settled?

13:56:34 6 **MS. HUGGINS:** I'm not interpreting settled.
13:56:37 7 In the labor context, settled is anything that --
13:56:40 8 settled is anything that is ranging from an other
13:56:44 9 disposition to a settled disposition.

13:56:49 10 **MR. DAVENPORT:** Okay. So what you're saying
13:56:50 11 is that if the outcome was not settled, then you're
13:56:55 12 going to object and direct Mr. Santana not to
13:56:57 13 answer?

13:56:58 14 **MS. HUGGINS:** The way that that is written
13:57:00 15 and --

13:57:01 16 **MR. DAVENPORT:** I have it if you need it.

13:57:02 17 **MS. HUGGINS:** I have it. Hang on.

13:57:04 18 **MR. DAVENPORT:** Okay. I'm reading this and
13:57:06 19 it says that: Disclosure is not allowed if there
13:57:09 20 is pending unsubstantiated, unfounded, exonerated,
13:57:13 21 or otherwise found not guilty. It doesn't say
13:57:16 22 anything about settled.

13:57:16 23 **MS. HUGGINS:** It is the --

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13:57:19 1 **MR. DAVENPORT:** Or regarding settlement
13:57:23 2 agreements.

13:57:23 3 **MS. HUGGINS:** It is on page 2, the middle
13:57:26 4 paragraph: It is further ordered that pending the
13:57:28 5 hearing schedule above for the preliminary
13:57:30 6 injunction, a temporary restraining order is hereby
13:57:32 7 issued restraining respondents and those acting in
13:57:35 8 concert with them from publicly disclosing any
13:57:38 9 records concerning unsubstantiated and pending
13:57:42 10 allegations or settlement agreements entered into
13:57:44 11 prior to June 12, 2020.

13:57:46 12 **MR. DAVENPORT:** I see nothing in there about
13:57:47 13 settled, so I'd just --

13:57:49 14 **MS. HUGGINS:** Settlement agreement.

13:57:50 15 **MR. DAVENPORT:** Well, you said settled and I
13:57:53 16 have no idea what settled means, but if I'm looking
13:57:55 17 at this and if what happens in this internal
13:57:59 18 affairs investigation was a finding of
13:58:03 19 substantiated, then there's nothing in this TRO
13:58:05 20 that would prevent Mr. Santana from talking about
13:58:07 21 it.

13:58:09 22 **MS. HUGGINS:** Respectfully, the TRO
13:58:11 23 restrains the City of Buffalo, its employees from

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13:58:15 1 publicly disclosing any records that would fall
13:58:17 2 into that.

13:58:19 3 Those concerns may not trouble you as a
13:58:22 4 nonlabor attorney who does not understand what
13:58:25 5 settlement agreement means, but I am telling you as
13:58:27 6 his attorney, out of an abundance of caution, I'm
13:58:31 7 going to object to the answer to that question
13:58:33 8 based upon this order to show cause.

13:58:34 9 I understand you may want to bring him back
13:58:37 10 once this litigation is completed and ask those
13:58:38 11 questions and that is different and we can address
13:58:40 12 that with the Court.

13:58:41 13 This is -- is very much an order from the
13:58:44 14 Court that I have concerns regarding.

13:58:47 15 **MR. DAVENPORT:** So does a settlement
13:58:48 16 agreement mean anything besides a lawsuit that is
13:58:52 17 put forth against an officer where it results in a
13:58:54 18 settlement agreement?

13:58:56 19 **MS. HUGGINS:** Lawsuit is different. We're
13:58:57 20 talking about internal affairs.

13:58:59 21 **MR. DAVENPORT:** Are there settlement
13:59:01 22 agreements for what internal affairs investigates?

13:59:03 23 **MS. HUGGINS:** My understanding is that there

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13:59:04 1 is.

13:59:05 2 **MR. DAVENPORT:** Okay. All right.

13:59:05 3 **MS. HUGGINS:** And that where is my concern
13:59:07 4 lies.

13:59:08 5 **MR. DAVENPORT:** All right.

13:59:08 6 **BY MR. DAVENPORT:**

13:59:09 7 **Q.** Well, I'm going to ask the question and
13:59:12 8 it sounds like Ms. Huggins will object to it. What
13:59:14 9 was the outcome of that other internal affairs
13:59:16 10 investigation?

13:59:17 11 **MS. HUGGINS:** And citing Judge Sedita's
13:59:19 12 order to show cause, I'm going to object to that
13:59:23 13 question and ask that the witness not answer it.

13:59:28 14 **BY MR. DAVENPORT:**

13:59:28 15 **Q.** As a witness, what sort of information
13:59:30 16 did you provide for that internal affairs
13:59:32 17 investigation?

13:59:34 18 **A.** Pretty much it's just --

13:59:35 19 **MS. HUGGINS:** Wait just a second. Can you
13:59:35 20 read that back to me?

13:59:35 21 (The above-requested question was then read
13:59:47 22 by the reporter.)

13:59:47 23 **MS. HUGGINS:** I'll allow that question to be

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13:59:54 1 asked and answered generally without revealing the
14:00:08 2 specifics of what may be contained in that
14:00:10 3 investigation citing this order to show cause.

14:00:16 4 **BY MR. DAVENPORT:**

14:00:16 5 **Q.** As a witness, what sort of information
14:00:18 6 were you required or did you provide as part of
14:00:21 7 this internal affairs investigation?

14:00:24 8 **A.** Generally what happened in relating to
14:00:27 9 that incident where I was involved in as a witness.

14:00:34 10 **Q.** Were you there present at the scene
14:00:36 11 when this incident took place that was the subject
14:00:37 12 of the internal affairs investigation?

14:00:39 13 **A.** Are you talking about this incident or
14:00:41 14 are you just talking about in general?

14:00:42 15 **Q.** Well, I'm talking about the previous
14:00:43 16 incident that you acted as a witness for.

14:00:46 17 **A.** Yes, I was.

14:00:47 18 **Q.** So you were present at the scene?

14:00:48 19 **A.** Yes. I was in the call log. It didn't
14:00:51 20 mean that I was present when the incident happened.
14:00:54 21 Somehow it could have been where I was involved in
14:00:56 22 a call and they called me in to see what my role
14:00:59 23 was within that call.

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14:01:00 1 **Q.** So is it your understanding that only
14:01:03 2 those officers who are involved on the call log are
14:01:06 3 asked to give a witness statement for internal
14:01:09 4 affairs investigations?

14:01:10 5 **A.** Everybody involved in that call whether
14:01:12 6 or not they were there or not.

14:01:15 7 **Q.** But if they're listed on the call log,
14:01:17 8 correct?

14:01:18 9 **A.** Yes.

14:01:18 10 **Q.** Okay. Because you weren't listed on
14:01:20 11 the call log for this incident that we're talking
14:01:22 12 about today.

14:01:23 13 **A.** No.

14:01:24 14 **Q.** Okay. So that's why you wouldn't be
14:01:26 15 expected to provide a statement as a witness for
14:01:28 16 this internal affairs investigation?

14:01:31 17 **MS. HUGGINS:** Form. You're asking him to
14:01:32 18 speculate why internal affairs would do something.

14:01:35 19 **MR. DAVENPORT:** No. He said that we --
14:01:38 20 witnesses -- witness statements are expected of
14:01:40 21 people who are on a call log, so I'm just merely
14:01:43 22 clarifying that the reason why he was not expected
14:01:45 23 to give a witness statement was because he was not

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14:01:48 1 listed on the call log. It's -- it's already
14:01:50 2 been --

14:01:51 3 **MS. HUGGINS:** Form. Form.

14:01:52 4 **MR. DAVENPORT:** Okay. All right.

14:01:53 5 **MS. HUGGINS:** Do you know why you didn't --
14:01:55 6 why you did or did not give a statement?

14:01:56 7 **MR. DAVENPORT:** That's not the question I
14:01:57 8 asked.

14:01:58 9 **BY MR. DAVENPORT:**

14:01:59 10 **Q.** My question is, is it because you were
14:02:01 11 not listed on the call log for this incident that
14:02:02 12 you were not asked to give a witness statement for
14:02:04 13 this incident that transpired on January 1st, 2017?

14:02:08 14 **MS. HUGGINS:** Form.

14:02:09 15 **THE WITNESS:** No, it's because I didn't see
14:02:11 16 the incident. That's why I wasn't called.

14:02:14 17 **BY MR. DAVENPORT:**

14:02:14 18 **Q.** Did they ask you if --

14:02:15 19 **A.** I wasn't there.

14:02:16 20 **Q.** -- you saw the incident?

14:02:18 21 **A.** No one ever asked me anything, but I
14:02:20 22 wasn't there and I didn't see the incident, so
14:02:22 23 that's why they didn't call me in.

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14:02:24 1 Q. Okay. Well, how do they know that you
14:02:27 2 didn't see the incident?

14:02:27 3 A. I don't know.

14:02:28 4 MS. HUGGINS: Form.

14:02:29 5 BY MR. DAVENPORT:

14:02:29 6 Q. They never asked you, though, right?

14:02:30 7 MS. HUGGINS: Form.

14:02:31 8 THE WITNESS: No, I never got notified to go
14:02:33 9 up to internal affairs, no.

14:02:35 10 BY MR. DAVENPORT:

14:02:35 11 Q. Did anybody besides somebody with
14:02:39 12 internal affairs ask you if you saw the incident?

14:02:41 13 A. No.

14:02:41 14 Q. So nobody ever asked you if you saw
14:02:43 15 what happened on January 1st of 2017 that's with
14:02:51 16 the City of Buffalo?

14:02:51 17 A. No one asked, no.

14:02:54 18 Q. But you yourself, you have never been
14:02:56 19 the target of an internal affairs investigation?

14:02:58 20 MS. HUGGINS: No. That, I'm going to object
14:02:59 21 to under this TRO.

14:03:03 22 MR. DAVENPORT: Okay. I'm just going to
14:03:04 23 preserve the record and our ability to ask that

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14:03:07 1 question.

14:03:07 2 **MS. HUGGINS:** That's understood and then I
14:03:10 3 expect that we will probably have a conference and
14:03:11 4 address it with the Court.

14:03:12 5 **MR. DAVENPORT:** I'm fine with that.

14:03:13 6 **MS. HUGGINS:** Yeah.

14:03:16 7 **BY MR. DAVENPORT:**

14:03:17 8 **Q.** Were you involved at all in the
14:03:18 9 criminal proceeding for Mr. Kistner?

14:03:21 10 **A.** No.

14:03:23 11 **Q.** Do you know the outcome --

14:03:25 12 **A.** No, I --

14:03:26 13 **Q.** -- of that criminal proceeding?

14:03:27 14 **A.** -- do not.

14:03:31 15 **MR. DAVENPORT:** All right. I think that's
14:03:31 16 all that I have.

14:03:36 17 (Discussion off the record.)

14:03:36 18 **The following was marked for Identification:**

19 **EXH. 37** **Proposed Order to Show Cause**

14:04:15 20 **MR. DAVENPORT:** I think we're all set for
14:04:16 21 today.

14:04:17 22 (Deposition concluded at 2:04 p.m.)

23 * * *

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1 I hereby CERTIFY that I have read the
2 foregoing 195 pages, and that except as to those
3 changes (if any) as set forth in an attached errata
4 sheet, they are a true and accurate transcript of
5 the testimony given by me in the above entitled
6 action on September 8, 2020.

7
8
9 -----
10 DAVID SANTANA
11
12
13
14
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19
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21
22
23

1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF ERIE)

4

5 I DO HEREBY CERTIFY as a Notary Public in and
6 for the State of New York, that I did attend and
7 report the foregoing deposition, which was taken
8 down by me in a verbatim manner by means of machine
9 shorthand. Further, that the deposition was then
10 reduced to writing in my presence and under my
11 direction. That the deposition was taken to be
12 used in the foregoing entitled action. That the
13 said deponent, before examination, was duly sworn
14 to testify to the truth, the whole truth and
15 nothing but the truth, relative to said action.

16

17

18

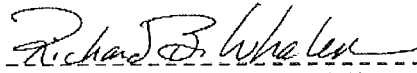
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RICHARD B. WHALEN, CM,
Notary Public.

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EXHIBIT H

Certificate #: U-000004751-F

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BUFFALO CITY COURT
 50 Delaware Avenue, Buffalo, NY 14202
 Phone: (716) 845-2689 Fax: (716) 847-8257

FEE
 Non-Public
 Version

The People of the State of New York
 vs.
James Kistner

Certificate of Disposition
 Docket Number: **CR-00122-17**

Defendant DOB: 04/03/1960

Arrest Date: 01/01/2017

Arraignment Date: 01/12/2017

THIS IS TO CERTIFY that the undersigned has examined the files of the **Buffalo City Court** concerning the above entitled matter and finds the following:

Count	Arraignment Charge	Charge Weight	Disposition	Disposition Date
1	PL 240.20 03 V Dis/Con:Obscene Lang/Gestures	V	Dismissed (Interest/Furtherance of Justice (CPL 170.30 (1)(g)), Do Not Seal)	04/04/2017
2	PL 145.05 02 EF Crim Mischief 3:Property>\$250 **SEALED 160.50**	EF	Reduced to (Count #3)	02/01/2017
3	PL 145.00 01 AM Crim Mis:Intent Damage Proptry **SEALED 160.50**	AM	Dismissed (Interest/Furtherance of Justice (CPL 170.30 (1)(g)), Sealed 160.50)	04/04/2017

Dated: April 2, 2018

Erika L. Webb
 Chief Clerk/Clerk of the Court

CAUTION: THIS DOCUMENT IS NOT OFFICIAL UNLESS EMBOSSED WITH THE COURT SEAL

It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law or by a conviction which is sealed pursuant to section 160.58 or 160.59 of the criminal procedure law, in connection with the licensing, employment or providing of credit or insurance to such individual; provided, further, that no person shall be required to divulge information pertaining to any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 or 160.59 of the criminal procedure law. The provisions of this subdivision shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law; provided further that the provisions of this subdivision shall not apply to an application for employment or membership in any law enforcement agency with respect to any arrest or criminal accusation which was followed by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 or 160.59 of the criminal procedure law. [Executive Law § 296 (16)]

Arraignment charges may not be the same as the original arrest charges.
 CPL 160.50: All official records (excluding published court decisions or opinions or records and briefs on appeal) related to the arrest or prosecution on file with the Division of Criminal Justice Services, any court, police agency or prosecutor's office shall not be available to any person or public or private agency.

EXHIBIT I

February 8, 2019

Bryan C. Lockwood
City of Buffalo Police Commissioner
74 Franklin Street
Buffalo, NY 14202

Dear Commissioner Lockwood:

Re: Complaint of James C. Kistner
Incident Date: January 1, 2017

As you may know, I recently filed a lawsuit against the City of Buffalo and other defendants (case number 18-cv-00402) relating to police misconduct that occurred on January 1, 2017. I was surprised to learn during the discovery process in my action that none of the officers involved were ever investigated or disciplined for what they did to me and my family. I am writing to you directly, asking you to remedy this oversight. Please forward this letter to your Internal Affairs Division immediately.

I have enclosed a copy of the complaint that my attorneys filed on my behalf. It will provide you with all the information needed for the IA investigation. Please let me know when your investigation begins, and if you need to speak with me about the officers' acts and omissions. Thank you.

Sincerely,

James Kistner

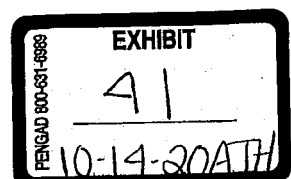
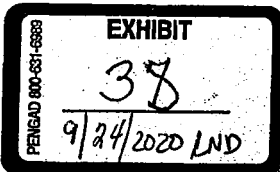


EXHIBIT J



BYRON W. BROWN
MAYOR

CITY OF BUFFALO
DEPARTMENT OF POLICE



BYRON C. LOCKWOOD
COMMISSIONER

SCANNED

AUG 25 2020

August 13, 2020

James Kistner
33 Schmarbeck Ave.
Buffalo, New York 14212

Ms. Kistner,

The Buffalo Police Department's Internal Affairs Division has investigated the complaint you initiated on December 19, 2019, as thoroughly as possible. Statements and reports were gathered from the persons involved and their superiors, where necessary. The Commissioner of Police then reviewed these statements and reports.

Based on a thorough review of this case, the Commissioner of Police has determined that there is not sufficient evidence at this time to clearly prove your case and has determined that the case disposition be carried as "not sustained."

If you have questions regarding your complaint, please feel free to contact the Internal Affairs Division at 851-4557. Refer to IAD Case Number EC2019-046. Thank you for bringing this matter to our attention.

Regards,

Lieutenant Louis Kelly
Internal Affairs Division

EXHIBIT K

EXHIBIT L

EXHIBIT M

EXHIBIT N

**VIDEO DEPOSITION
DANIEL DERENDA**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES C. KISTNER,

Plaintiff,

- vs - Civil Action No.
18-cv-402

THE City of Buffalo,
c/o Corporation Counsel,
BYRON LOCKWOOD, individually and in
his capacity as Police Commissioner
of the Buffalo Police Department,
DANIEL DERENDA, individually and in his
capacity as Police Commissioner of the
Buffalo Police Department,
LAUREN McDERMOTT, individually and
in her capacity as a Buffalo Police Officer,
JENNY VELEZ, individually and in her
capacity as a Buffalo Police Officer,
KARL SCHULTZ, individually and in his
capacity as a Buffalo Police Officer,
KYLE MORIARTY, individually and in his
capacity as a Buffalo Police Officer,
DAVID T. SANTANA, individually and in his
capacity as a Buffalo Police Officer,
JOHN DOE(S), individually and in his/their
capacity as a Buffalo Police Officer(s),

Defendants.

1 Video deposition of **DANIEL DERENDA**,
 2 Defendant, taken pursuant to the Federal Rules of
 3 Civil Procedure, in the offices of JACK W. HUNT &
 4 ASSOCIATES, INC., 1120 Liberty Building, Buffalo,
 5 New York, on September 24, 2020, commencing at
 6 10:10 a.m., before LETITIA N. DAVIES, Notary Public.

7 APPEARANCES: RUPP BAASE
 PFALZGRAF & CUNNINGHAM, LLC,
 8 By CHAD DAVENPORT, ESQ.,
 1600 Liberty Building,
 9 Buffalo, New York 14202,
 (716) 854-3400,
 10 davenport@ruppbaase.com,
 Appearing for the Plaintiff.
 11
 12 TIMOTHY A. BALL, ESQ.,
 Corporation Counsel,
 By MAEVE E. HUGGINS, ESQ.,
 13 Assistant Corporation Counsel,
 1137 City Hall,
 14 Buffalo, New York 14202,
 (716) 851-4334,
 15 mhuggins@city-buffalo.com,
 Appearing for the Defendants.

16 PRESENT: JAMES KISTNER
 17 PATRICK F. MORRIS, Videographer

10:09:44

10:10:25

18
 19 **THE VIDEOGRAPHER:** This will begin the video
 20 recorded testimony of Daniel Derenda, taken for a
 10:10:30 21 case to be tried in the United States District
 10:10:33 22 Court in the Western District of New York. To be
 10:10:33 23 used in the matter of James Kistner versus the

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1 City of Buffalo, et al.

10:10:38 2 This testimony is being taken at the office
10:10:39 3 of Jack W. Hunt & Associates at 1120 Liberty
10:10:43 4 Building in Buffalo, New York on September 24th,
10:10:46 5 2020 and is commencing at a time of 10:10 as
10:10:49 6 indicated on the video screen.

10:10:51 7 The court reporter and notary public, who is
8 from the firm of Jack W. Hunt & Associates is
9 Letitia Davies. My name is Patrick Morris and I'm
10:10:58 10 a video technician of the same firm.

11 Counsel for the plaintiff will now introduce
12 themselves, followed by counsel for the defendant and
10:11:04 13 the reporter will then swear in the witness.

10:11:07 14 **MR. DAVENPORT:** Chad Davenport appearing on
10:11:08 15 behalf of the plaintiff, Jim Kistner.

16 **MS. HUGGINS:** Maeve Huggins on behalf of the
17 defendants.

18 **THE REPORTER:** Will this be usual
19 stipulations?

20 **MS. HUGGINS:** We'll read and sign, 45 days,
21 please.

22

23

1 **D A N I E L D E R E N D A**, 47 Seward Street,
2 Buffalo, New York 14206, after being duly called
3 and sworn, testified as follows:

4

5 **EXAMINATION BY MR. DAVENPORT:**

6

10:11:40 7 **Q.** Good morning, Mr. Derenda.

10:11:41 8 **A.** How are you?

10:11:42 9 **Q.** My name is Chad Davenport. I am the
10:11:44 10 attorney on behalf of the plaintiff, Jim Kistner in
10:11:47 11 this case versus the city of Buffalo. It pertains
10:11:50 12 to an incident that happened on January 1st of 2017.

10:11:54 13 Have you ever given sworn testimony before
10:11:57 14 in a civil case?

10:11:58 15 **A.** Yes.

10:11:58 16 **Q.** Approximately how many times have you
10:12:01 17 given sworn testimony?

10:12:03 18 **A.** At least a half dozen. Just recently a
10:12:06 19 lot, so several different cases.

10:12:08 20 **Q.** So same ground rules apply. I just ask
10:12:12 21 that you wait for me to finish my question before
10:12:14 22 you answer any question.

10:12:16 23 I also ask that you give all verbal

Derenda - Davenport - 9/24/2020

5

10:12:18 1 responses to any of the questions that I ask.

10:12:22 2 Please refrain from shaking or nodding your head.

10:12:26 3 If at any time you need to take a break,

10:12:28 4 just let me know. I'm more than happy to

10:12:30 5 accommodate.

10:12:33 6 And then also, if you need me to rephrase

10:12:34 7 any questions, just ask me. I'm more than happy to

10:12:37 8 rephrase any question if you don't understand it.

10:12:40 9 And I just ask that you answer all questions to the

10:12:42 10 best of your ability.

10:12:43 11 And if you don't recall you can simply tell

10:12:46 12 me that you do not recall. And that is an

10:12:49 13 acceptable answer, as well.

10:12:51 14 **A.** Okay.

10:12:51 15 **Q.** Mr. Derenda, what -- what would you

10:12:55 16 like me to refer to you during this deposition?

17 Should I refer to you as Commissioner Derenda?

10:13:01 18 Mr. Derenda? Daniel? Dan?

10:13:01 19 **A.** Dan is fine.

10:13:02 20 **Q.** Dan. So Dan, what is your educational

10:13:07 21 background?

10:13:08 22 **A.** Educational background, high school

10:13:10 23 grad with some college courses. I do not have a

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Derenda - Davenport - 9/24/2020

6

10:13:14 1 college degree.

10:13:14 2 Q. Where -- where did you take those
10:13:16 3 college courses?

10:13:17 4 A. ECC.

10:13:18 5 Q. And approximately what years did you go
10:13:21 6 to ECC?

10:13:22 7 A. It was a long time ago. It was just a
10:13:28 8 couple courses. Plus then also, the police academy
10:13:32 9 in '86, which would be some courses there. So
10:13:35 10 prior to '86.

10:13:38 11 Q. Were you taking those classes at ECC
10:13:41 12 outside of the police academy?

10:13:43 13 A. Yes, that was prior to the police
10:13:47 14 academy.

10:13:47 15 Q. So that would have been before 1986
10:13:50 16 then?

10:13:50 17 A. Correct.

10:13:51 18 Q. And do you recall what classes you took
10:13:52 19 at ECC?

10:13:53 20 A. Not specifically, they were criminal
10:13:55 21 justice related.

10:13:58 22 Q. How many years did you take courses at
10:14:01 23 ECC for?

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Derenda - Davenport - 9/24/2020

7

10:14:02 1 **A.** I just took a class here and there.

10:14:04 2 Just a couple classes.

10:14:06 3 **Q.** Were those classes required to get into
10:14:11 4 the police academy at that time?

10:14:11 5 **A.** No.

10:14:12 6 **Q.** Now, do you recall what month you
10:14:14 7 started in the police academy in 1986?

10:14:17 8 **A.** March 24th, 1986 I was sworn in. So I
10:14:22 9 would have started the following Monday in the
10:14:25 10 academy.

10:14:26 11 **Q.** So you were sworn in before you passed
10:14:31 12 through the police academy?

10:14:32 13 **A.** Correct.

10:14:33 14 **Q.** And then, how long after March 24th of
10:14:37 15 1986 were you in the police academy for?

10:14:41 16 **A.** I think I graduated three months later.
10:14:44 17 Somewhere around there, March, April. Might have
10:14:46 18 been even longer than that. Might have been
10:14:49 19 August. I don't recall, specifically.

10:14:52 20 **Q.** After you had graduated from the police
10:14:54 21 academy, did you start as a patrol officer?

10:14:57 22 **A.** Correct.

10:15:00 23 **Q.** Were there different districts within

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Derenda - Davenport - 9/24/2020

8

10:15:03 1 the city of Buffalo at that time?

10:15:03 2 **A.** There were precincts at the time.

10:15:06 3 **Q.** And -- I'm sorry for assuming. But did

10:15:07 4 you start your career with the city of Buffalo

10:15:11 5 Police Department?

10:15:11 6 **A.** Yes, I did.

10:15:12 7 **Q.** And that would have been August or July

10:15:14 8 of 1986?

10:15:16 9 **A.** Technically, it would have been

10:15:17 10 March 24th of '86. You go through the academy and

10:15:20 11 then you get assigned to a precinct back then.

10:15:24 12 Now, it would be a district.

10:15:26 13 **Q.** Do you recall what precinct you were

10:15:28 14 originally assigned to?

10:15:28 15 **A.** Precinct 8 Broadway/Fillmore.

10:15:31 16 **Q.** And how long were you in that precinct

10:15:33 17 for?

10:15:33 18 **A.** Approximately 10 years until it closed.

10:15:37 19 **Q.** Do you know why that precinct closed?

10:15:40 20 **A.** The commissioner consolidated with

10:15:43 21 moving to a district system. They closed

10:15:46 22 Precinct 8, combined them with Precinct 11.

10:15:49 23 I was at Precinct 11 for a short period on

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9

10:15:50 1 patrol. And I transferred to Precinct 16, which
10:15:55 2 would have been the Bailey/Kensington area.

10:15:56 3 Q. Would that have been during the
10:15:59 4 10 years that you were working in Precinct 8? Or
10:16:00 5 after the initial 10 years with Precinct 8?

10:16:02 6 A. Precinct 8 was probably just under
10:16:05 7 10 years, about the same timeframe. Most of it was
10:16:08 8 spent at -- most of my patrol time was spent at
10:16:10 9 Precinct 8. A very short period at -- at 11, moved
10:16:16 10 to Precinct 16 for maybe about a year.

10:16:18 11 And then I was made detective and actually
10:16:21 12 assigned to Precinct 16. But then when D-District
10:16:25 13 opened up on Hertel Avenue I transferred there.
10:16:28 14 That might have been '96, '97, somewhere around
10:16:32 15 there.

10:16:37 16 Q. And how long did you work in D-District
10:16:41 17 for?

10:16:42 18 A. In D-District as a detective, I was
10:16:45 19 there as a detective. Then I was promoted to
10:16:50 20 detective sergeant. I stayed there probably a few
10:16:52 21 years total.

10:16:53 22 And then at some point I transferred down to
10:16:59 23 the Buffalo Police Headquarters Narcotics. I was

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Derenda - Davenport - 9/24/2020

10

10:16:59 1 there for a short period of time.

10:17:01 2 And I was transferred to homicide after
10:17:03 3 that, as a detective sergeant to both narcotics and
10:17:11 4 homicide.

10:17:11 5 Q. Now, what's the difference between a
10:17:15 6 detective and a detective sergeant?

10:17:15 7 A. The sergeant is the supervisor.

10:17:17 8 Q. Is there a supervisor above detective
10:17:20 9 sergeant?

10:17:20 10 A. Well, yeah, obviously. In the
10:17:24 11 detective division the next would be the chief of
12 detectives. However, it was a convoluted system.

10:17:30 13 So although I was a detective under
10:17:33 14 detective sergeant, I still reported to the
10:17:36 15 district inspector. And lieutenants that were
10:17:37 16 patrol lieutenants out ranked me also or captains.
10:17:40 17 So there's a whole chain of command that way.

10:17:44 18 Q. How long did you work with the
10:17:46 19 detective division for?

10:17:48 20 A. I think it was from '98 through 2000 --
10:17:52 21 up until 2006. February of 2006, when I was
10:17:56 22 promoted to deputy police commissioner in charge of
10:18:02 23 operations.

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Derenda - Davenport - 9/24/2020

11

10:18:02 1 Q. How many deputy police commissioners
10:18:05 2 are there?

10:18:05 3 A. Two.

10:18:06 4 Q. And your title was in control of
10:18:08 5 operations?

10:18:08 6 A. Correct.

10:18:09 7 Q. And then, what were the other deputy
10:18:11 8 commissioners?

10:18:12 9 A. Administrative.

10:18:16 10 Q. Now, for operations, what were your
10:18:20 11 typical -- your responsibilities as the
12 detective -- as -- excuse me, the deputy in
10:18:28 13 charge --

10:18:28 14 A. Operations. There's five districts, so
10:18:31 15 the chiefs of each district would report to the
10:18:34 16 deputy of operations.

10:18:35 17 And basically, the detective division,
10:18:39 18 basically, gave the day operations of the police
10:18:40 19 department. Patrol, detective division, anything
10:18:44 20 to do with operations, accident investigation,
10:18:51 21 homicide. All the units.

10:18:54 22 Q. What was your role with accident
10:18:57 23 investigation? What were your responsibilities for

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10:19:02 1 the job -- overseeing them?

10:19:03 2 **A.** Well, they would report up through a
10:19:05 3 chain of command to me. So basically, you oversee
10:19:08 4 all of operations. They're part of the operations.

10:19:10 5 **Q.** So you would have been last in line for
10:19:13 6 any accident investigation that took place?

10:19:16 7 **A.** Yes -- second last in line. Because
10:19:17 8 then it would go up to the commissioner.

10:19:20 9 **Q.** But you would provide your
10 recommendation to the commissioner?

10:19:26 11 **MS. HUGGINS:** Form.

12 **THE WITNESS:** For --

13 **MS. HUGGINS:** You can answer.

14 **BY MR. DAVENPORT:**

10:19:27 15 **Q.** For any accident investigation, would
16 you provide your recommendation to the
10:19:30 17 commissioner?

10:19:30 18 **A.** Recommendation on what?

10:19:32 19 **Q.** On the facts and circumstances
10:19:35 20 surrounding an accident, whether it be accidents
10:19:41 21 involving negligence or that sort of --

10:19:44 22 **A.** Very little of what accident
10:19:46 23 investigation would do would even reach me. And I

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10:19:50 1 don't recall what might have or not, but very
10:19:52 2 little would have.

10:19:54 3 **MS. HUGGINS:** Form as to the last question.

4 **BY MR. DAVENPORT:**

10:19:58 5 **Q.** With accident investigation, was there
10:20:00 6 somebody who was the supervisor at the time when
10:20:05 7 you were working as the deputy commissioner?

10:20:07 8 **A.** I don't recall who it was because it's
10:20:09 9 a position by seniority. So there would be a
10:20:14 10 lieutenant and there would be a captain, probably
10:20:15 11 from traffic that would oversee that.

10:20:16 12 It's changed numerous times over the years.
10:20:19 13 And there would be an inspector after that. And
10:20:22 14 then it would get to me.

10:20:24 15 **Q.** Would the inspector be above the
10:20:28 16 captain?

10:20:28 17 **A.** Correct, there were only a few
10:20:31 18 inspectors. So he might have certain people he
10:20:34 19 would -- he'd be responsible for. But a group of
10:20:37 20 different types of things, so.

10:20:40 21 **Q.** Do you know, approximately how many
10:20:45 22 personnel were working in the accident
10:20:48 23 investigation unit, more particularly around in

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10:20:50 1 2017?

10:20:51 2 **A.** I don't recall.

10:20:52 3 **Q.** If you were to provide an estimate,
10:20:55 4 would it be above 20 personnel?

10:20:58 5 **A.** I wouldn't provide an estimate. I
10:21:00 6 don't recall. I don't believe it would be above
10:21:04 7 20, but.

10:21:05 8 **Q.** Do you know, approximately how many
10:21:06 9 times accident investigation is called to a scene
10:21:10 10 to investigate an accident?

10:21:12 11 **MS. HUGGINS:** Form.

10:21:12 12 **THE WITNESS:** I don't have those numbers.

13 **BY MR. DAVENPORT:**

10:21:16 14 **Q.** Would it be more or less than once a
10:21:20 15 week?

10:21:20 16 **A.** It would be in serious matters where
10:21:23 17 there was death, serious injury. It would not be
10:21:26 18 routine to call out an accident investigation.

10:21:33 19 **Q.** And was that the normal protocol in
10:21:38 20 2017, as well?

10:21:39 21 **A.** I would believe that would be, correct.

10:21:44 22 **Q.** Would accident investigation be
10:21:48 23 required to investigate any police involved motor

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10:21:51 1 vehicle accident?

10:21:52 2 **A.** What would have taken place, the policy
10:21:54 3 I put in place for any officer involved vehicle
10:21:58 4 accidents, internal affairs would respond to every
10:22:01 5 one of those scenes of an officer involved vehicle
10:22:03 6 accidents.

10:22:04 7 But at times accident investigation could
10:22:08 8 depending on the seriousness.

10:22:09 9 **Q.** Would IAD be required to go to any
10:22:14 10 police involved motor vehicle accident?

10:22:16 11 **A.** Correct.

10:22:16 12 **Q.** And then accident investigation would
10:22:18 13 only come in if it was a serious injury?

10:22:21 14 **A.** Correct, or other circumstances that
10:22:24 15 they would feel that you would need them.

10:22:27 16 **Q.** What were some of those other
10:22:29 17 circumstances?

10:22:30 18 **A.** Again, death, serious -- serious
10:22:33 19 physical injury, it could be a large amount of
10:22:37 20 property damage. Again, depending on the scenario
10:22:41 21 they would call them if they needed them or they
10:22:44 22 thought they needed them.

10:22:45 23 But internal affairs was tasked with

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10:22:47 1 investigating every accident. That's a policy I
10:22:49 2 put in place.

10:22:50 3 Q. Do you know, approximately when you put
10:22:52 4 that policy in place?

10:22:53 5 A. Sometime after 2010 when I became
10:22:57 6 commissioner.

10:22:57 7 Q. So you would have been deputy police
10:22:58 8 commissioner from 2006 to 2010?

10:23:01 9 A. From February 1st, 2006. In January of
10:23:06 10 2010 I was appointed interim. And six months later
10:23:10 11 I was appointed permanent, so July 2010.

10:23:16 12 Q. Who was the police commissioner right
10:23:18 13 before you?

10:23:18 14 A. McCarthy Gibson.

10:23:21 15 Q. And how long was he the police
10:23:22 16 commissioner for?

10:23:23 17 A. Four years.

10:23:24 18 Q. Who appointed you to be police
10:23:27 19 commissioner for the city of Buffalo?

10:23:29 20 A. Commissioners and deputy commissioners
10:23:31 21 were appointed by the mayor.

10:23:34 22 Q. Is there any input that comes in from
10:23:39 23 Common Council? Or other city of Buffalo

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1 representatives?

10:23:41 2 **A.** For -- for commissioner you have to go
10:23:43 3 before the Council, but deputy not. But for
10:23:46 4 commissioner you go before Council, you do a
10:23:48 5 hearing and they vote on your appointment.

10:23:53 6 **Q.** So the mayor would nominate you and
10:23:57 7 then Common Council would vote you in?

10:23:59 8 **A.** Correct.

10:23:59 9 **Q.** Do you recall how many Common Council
10:24:05 10 members voted on your status as police
10:24:08 11 commissioner?

10:24:08 12 **A.** I don't recall.

10:24:12 13 **Q.** Do you know if there was a quorum that
10:24:16 14 day?

10:24:17 15 **A.** I don't recall.

10:24:22 16 **Q.** In 2010 -- July of 2010, you were
10:24:26 17 appointed as full-time police commissioner?

10:24:30 18 **A.** Correct.

10:24:30 19 **Q.** But prior to that, for six months you
10:24:32 20 had been the interim police commissioner?

10:24:34 21 **A.** Correct.

10:24:35 22 **Q.** Why was it that you were appointed as
10:24:38 23 the interim police commissioner for six months?

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10:24:41 1 **A.** Until the mayor made the decision to
10:24:44 2 put me up for permanent and go before the Council.

10:24:47 3 **Q.** Had the previous police commissioner
10:24:49 4 retired then -- at that time?

10:24:51 5 **A.** He wasn't reappointed.

10:24:55 6 **Q.** How often are police commissioners
10:25:00 7 appointed? Or reappointed?

10:25:01 8 **A.** Every four years. Or if they're
10:25:04 9 removed they can be appointed. It's the mayor --
10:25:07 10 mayor selection -- selected by the mayor. You
10:25:10 11 serve at the discretion of the mayor.

10:25:11 12 So therefore, if he wants you removed now
10:25:14 13 and it's not a four-year term, you're removed. But
10:25:18 14 every four years you go through the process again.

10:25:21 15 **Q.** And is that in the Buffalo Charter that
10:25:24 16 police commissioners serve for four years?

10:25:26 17 **A.** Not 100% certain. But no, there's no
10:25:29 18 term -- I believe, you get sworn in for four --
10:25:32 19 four years later you have to be reappointed. I
10:25:36 20 don't know if it's in the Charter or not.

10:25:37 21 **Q.** Would you have been reappointed then in
10:25:39 22 2014?

10:25:40 23 **A.** I was.

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10:25:42 1 Q. Did you seek reappointment in 2018?

10:25:47 2 A. I left January of 2018.

10:25:53 3 Q. And do you know when the reappointment
10:25:56 4 would have been? Would it have been July of 2018?

10:25:58 5 A. No, it would have been January.

10:26:00 6 Q. So --

10:26:01 7 A. I believe it went before the Council
10:26:05 8 prior to a week, but I knew I was leaving. I just
10:26:08 9 didn't tell anybody.

10:26:15 10 Q. So when you were reappointed in 2014,
10:26:19 11 that would have been in January of 2014?

10:26:21 12 A. Somewhere around there. Maybe not
10:26:23 13 exactly January, but whenever they got the Council
10:26:26 14 hearing. Could have been February.

10:26:37 15 Q. During the reappointment process, what
10:26:40 16 kinds of questions would Common Council ask you?

10:26:43 17 A. I don't recall specifics. More about
10:26:47 18 crime issues, different issues, community issues.
10:26:49 19 Specifically, I don't recall.

10:26:52 20 Q. And are those the questions -- the
10:26:54 21 types of questions that they would have asked you
10:26:56 22 in 2014?

10:26:58 23 A. Probably, both in '10 and '14.

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10:27:01 1 Q. In 2010 when you were initially
10:27:04 2 appointed, did they ask you those types of
10:27:06 3 questions?

10:27:06 4 A. I'll make the assumption, yes.

10:27:08 5 Q. As the police commissioner, were you in
6 charge of all districts?

10:27:14 7 A. Responsible for all police departments
10:27:16 8 both operations and administrative, yes.

10:27:20 9 Q. And when you were appointed in 2010,
10:27:23 10 was there a district system rather than a precinct
10:27:26 11 system?

10:27:26 12 A. District system, correct.

10:27:27 13 Q. But that was something that the
10:27:28 14 previous commissioner had --

10:27:30 15 A. It was a couple commissioners before
10:27:32 16 him. So R. Gil Kerlikowske started consolidating
17 the precincts. After R. Gil left, Rocco Diina
10:27:43 18 became the commissioner and, I believe, the process
10:27:44 19 was complete during his term.

10:27:47 20 Q. How many districts would there have
10:27:51 21 been when you first started as police commissioner?

10:27:53 22 A. Five.

10:27:54 23 Q. And those five districts would have

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10:27:57 1 been A through E districts?

10:28:00 2 **A.** Correct.

10:28:01 3 **Q.** Were those the same districts that were
10:28:02 4 in place when you left the position as police
10:28:06 5 commissioner?

10:28:06 6 **A.** Yes.

10:28:06 7 **Q.** Was there any change in the zones for
10:28:13 8 each of those districts during your tenure?

10:28:15 9 **A.** Meaning, zones -- meaning?

10:28:17 10 **Q.** I should have used districts. Was
10:28:21 11 there any change in the mapping for the districts
10:28:25 12 during your tenure as commissioner?

10:28:27 13 **A.** Possibly, I don't remember.

10:28:29 14 **Q.** But they generally remained the same?

10:28:32 15 **A.** Generally, again, they divided it up
10:28:36 16 into different areas. But I don't recall.

10:28:40 17 **Q.** Do you know what the zone or map is for
10:28:46 18 the C-District, where that district is placed?

10:28:50 19 **A.** C-District it is the -- it's actually
10:28:54 20 the building is on Fillmore going up to Ferry. I'm
10:28:58 21 not sure where the boundaries are. Boundaries
10:29:01 22 might be Bailey Avenue up to -- up to Walden.
10:29:07 23 Might even go up to Genesee. I'm not 100% certain.

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10:29:13 1 Q. And to the best of your recollection,
10:29:16 2 is that the zone that was in place for
10:29:19 3 C-District -- the mapping that was in place for
10:29:22 4 C-District on January 1st, 2017?

10:29:23 5 A. Yes.

10:29:24 6 Q. Do you know who the captain is for
10:29:28 7 C-District?

10:29:29 8 A. Currently?

10:29:30 9 Q. Currently. We'll start with currently.

10:29:32 10 A. I have no idea.

10:29:34 11 Q. Do you know who the captain was for
10:29:35 12 C-District in 2017?

10:29:38 13 A. I don't recall.

10:29:40 14 Q. Now, who would be below captain in the
10:29:47 15 chain of command?

10:29:47 16 A. A lieutenant.

10:29:48 17 Q. And how many --

10:29:49 18 A. For districts, there would be a chief
10:29:53 19 in charge of a district. And then there would be
10:29:56 20 captains assigned. And there would be lieutenants
10:29:59 21 assigned and right on down.

10:30:01 22 Q. How many chiefs would be assigned to
10:30:03 23 any one --

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10:30:03 1 **A.** It's one chief for every district.

10:30:05 2 **Q.** And then how many captains would be
10:30:07 3 assigned?

10:30:08 4 **A.** In some cases there was one, maybe two.
10:30:11 5 Depending on what district, call volumes.

10:30:14 6 **Q.** Do you know in C-District if they had
10:30:15 7 one or two captains?

10:30:17 8 **A.** I don't recall.

10:30:17 9 **Q.** And then below that would have been
10:30:21 10 lieutenants?

10:30:21 11 **A.** Yes.

10:30:22 12 **Q.** And how many lieutenants would there
10:30:23 13 be?

10:30:23 14 **A.** There's a lieutenant assigned to every
10:30:26 15 shift. So sometimes -- well, it might be two
10:30:29 16 because they overlap and move around.

10:30:32 17 **Q.** Do you know who the lieutenants were in
10:30:35 18 C-District in 2017?

10:30:36 19 **A.** I don't recall.

10:30:37 20 **Q.** Do you know if one of those lieutenants
10:30:40 21 was Anthony McHugh?

10:30:42 22 **A.** I don't recall.

10:30:44 23 **Q.** Are you familiar with the name

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10:30:49 1 Anthony McHugh?

10:30:49 2 A. I've heard the name.

10:30:51 3 Q. Have you ever worked with him before?

10:30:53 4 A. Not to my knowledge.

10:30:54 5 Q. As the police commissioner, do you
10:31:01 6 review, generally, reports of crime in certain
10:31:03 7 districts?

10:31:03 8 A. I would look at different crime
10:31:06 9 reports, what's going on.

10:31:07 10 Q. Besides crime reports, what else would
10:31:09 11 you review?

10:31:12 12 A. Look at crime patterns, what's going
10:31:15 13 on, different things. I overlook everything. So I
10:31:18 14 would receive reports. Occasionally read through
10:31:21 15 them, different reports.

10:31:22 16 Q. Do you ever receive reports on
10:31:25 17 disciplinary matters?

10:31:27 18 A. You would -- you would do what they
10:31:29 19 called an internal affairs review process.

10:31:34 20 Q. And what would -- what would take part
10:31:35 21 in that process during an internal affairs review?

10:31:38 22 A. So basically, there would be a
10:31:40 23 complaint filed or an investigation initiated by

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10:31:42 1 the department. It would investigate it and then
10:31:46 2 bring it for review before me, the deputy
10:31:49 3 commissioner. And there's usually a legal counsel
10:31:51 4 there.

10:31:52 5 And you -- they would review the case, tell
10:31:55 6 you what they have. Then you'd make a decision
10:31:58 7 what to do with that case at that point, sustained,
10:32:04 8 not sustained, unfounded. But you would review the
10:32:08 9 cases.

10:32:08 10 Q. And would the legal counselor be
10:32:11 11 somebody with the city of Buffalo?

10:32:13 12 A. Yes.

10:32:13 13 Q. And generally, not outside counsel,
10:32:15 14 correct?

10:32:15 15 A. Correct.

10:32:17 16 Q. Would that attorney generally be the
10:32:21 17 same? Or does it switch?

10:32:23 18 A. It was generally the same.

10:32:26 19 Q. And then you gave a couple of different
10:32:30 20 possible outcomes, one of those being not
10:32:33 21 sustained?

10:32:34 22 A. Correct.

10:32:34 23 Q. What's a not sustained finding?

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10:32:37 1 **A.** Not sustained means, I couldn't prove
10:32:39 2 the allegation one way or the other. Sustained
10:32:43 3 means, I could prove it. Unfounded, in my opinion,
10:32:47 4 means, it didn't happen as reported.

10:32:51 5 **Q.** So a not sustained would just be based
10:32:53 6 on the evidence that was put before you?

10:32:56 7 **A.** Correct.

10:32:57 8 **Q.** Would it be your job to review the
10:33:02 9 amount of evidence that is placed before you in an
10:33:06 10 internal affairs investigation?

10:33:07 11 **A.** The investigator would bring up the
10:33:09 12 evidence, what he had, give an opinion,
10:33:12 13 recommendation.

10:33:13 14 We'd also confer with legal counsel and make
10:33:15 15 a determination whether we believe it was sustained
10:33:19 16 or not sustained or unfounded.

10:33:20 17 **Q.** Would that meeting between you, the
10:33:23 18 internal affairs investigator and legal counsel
10:33:26 19 take place with all of you in the same room at the
10:33:27 20 same time?

10:33:27 21 **A.** All in the same room, along with the
10:33:32 22 internal affairs inspector. And he would bring in
10:33:33 23 investigators one at a time to present their cases.

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10:33:39 1 Q. Would you ever bring in the complainant
10:33:43 2 as part of --

10:33:44 3 A. No.

10:33:46 4 Q. And you said it would be the internal
10:33:50 5 affairs investigator?

10:33:50 6 A. It would be to interview the
10:33:53 7 complainants, correct.

10:33:53 8 Q. Would it just be the investigator who
10:33:57 9 interviewed the complainants who would be present
10:34:03 10 for this presentation of the evidence to you?

10:34:03 11 A. Yes.

10:34:03 12 Q. Is there any supervisors from internal
10:34:06 13 affairs who are also part of this meeting?

10:34:09 14 A. The inspector.

10:34:10 15 Q. And how many internal affairs
10:34:12 16 inspectors are there?

10:34:13 17 A. One.

10:34:14 18 Q. What would --

10:34:18 19 A. Sometimes the captain, too, would be
10:34:21 20 there. Internal affairs captain may attend a
10:34:25 21 review.

10:34:25 22 Q. And then would inspector be above
10:34:29 23 captain in the chain of command?

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10:34:30 1 **A.** Correct.

10:34:31 2 **Q.** And then, what would be below captain?

10:34:33 3 **A.** Lieutenant.

10:34:35 4 **Q.** And then, would there be a position

10:34:39 5 below lieutenant for internal affairs?

10:34:42 6 **A.** No, at one point they had detectives up

10:34:46 7 there, but we switched to lieutenants.

10:34:46 8 **Q.** Do you know, approximately when it

10:34:49 9 switched from detectives to lieutenants?

10:34:51 10 **A.** I do not. I don't recall.

10:34:53 11 **Q.** Was that during your tenure as

10:34:56 12 commissioner?

10:34:56 13 **A.** I don't recall.

10:34:57 14 **Q.** Do you know when, approximately that

10:35:02 15 change would have been made?

10:35:04 16 **A.** No, I don't.

10:35:05 17 **Q.** So there's one inspector; is that

10:35:09 18 correct?

10:35:09 19 **A.** Correct.

10:35:10 20 **Q.** And then how many captains?

10:35:11 21 **A.** Just one captain that generally over --

10:35:14 22 oversaw the drug testing and would assist on other

10:35:18 23 things, occasionally.

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10:35:22 1 Q. And who would that drug testing be for?

10:35:26 2 A. Police officers.

10:35:28 3 Q. Is that a requirement to become a
10:35:31 4 police officer that they pass a drug test?

10:35:33 5 A. It was initially when I started. It's
10:35:37 6 a union issue that they didn't do drug testing for
10:35:42 7 a while. Then we finally got an agreement within
10:35:44 8 the last few years before I left to drug test.

10:35:47 9 They had to sign off on the agreement and
10:35:50 10 they did. So we restarted testing at some point
10:35:54 11 during my administration.

10:35:57 12 Q. Now, you said that would have been
10:35:59 13 within the last couple of years before you left the
14 position of police commissioner?

10:36:02 15 A. Within the last few years prior when we
10:36:03 16 signed the contract. We got some other things
10:36:06 17 agreed upon.

10:36:06 18 Q. Do you know if that would have been
10:36:09 19 before or after January 1st of 2017?

10:36:11 20 A. That was before.

10:36:13 21 Q. Do you know what kinds of drugs they
10:36:17 22 were testing for at that time?

10:36:18 23 A. I don't recall. Probably, opioids,

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10:36:20 1 marijuana, different things. Whatever was agreed
10:36:28 2 to by the -- with the union. They had to sign off
10:36:31 3 on it.

10:36:31 4 Q. Now, the captain in internal affairs
10:36:34 5 who's overseeing the drug testing, would their
10:36:38 6 role -- would they also oversee drug testing that
10:36:41 7 takes place after a police officer is initially
10:36:45 8 hired?

10:36:47 9 A. Yes, that's when he would oversee -- he
10:36:50 10 would oversee it, they had a specific position.
10:36:52 11 For a while we weren't allowed to test, for years.

10:36:56 12 And then we gained the testing ability back
10:36:59 13 through a negotiation with the union and he oversaw
10:37:03 14 that. He wouldn't oversee the initial testing,
10:37:06 15 that would be the academy when people are coming in
16 we have to test.

10:37:10 17 Or HR and City Hall would do the drug test
10:37:13 18 when they are being hired.

10:37:15 19 Q. So the captain for internal affairs
10:37:18 20 who's overseeing drug testing, is there a drug test
10:37:21 21 that's administered as part of the internal affairs
10:37:25 22 review process?

10:37:25 23 A. Meaning, an internal affairs case drug

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10:37:29 1 tested? Is that what you're saying?

10:37:30 2 Q. So if a police office is named in a
3 complaint --

4 A. Correct.

10:37:33 5 Q. -- would that officer be subjected to a
10:37:37 6 drug test?

10:37:37 7 A. No.

10:37:38 8 Q. So for the internal affairs captain,
10:37:41 9 who is in charge of overseeing drug testing, what
10:37:47 10 role would he play in an internal affairs
10:37:50 11 investigation?

10:37:50 12 A. He also assisted in other cases. He
10:37:53 13 would sit in on reviews, occasionally.

10:38:02 14 Q. And would it be at your discretion
10:38:07 15 whether the captain would sit in or not?

10:38:09 16 A. The internal affairs inspector was
10:38:16 17 there all the time, mandated to.

10:38:18 18 Q. Would the lieutenant for internal
10:38:20 19 affairs also be present during the internal affairs
10:38:22 20 investigation?

10:38:22 21 A. The lieutenant whose case it was would
10:38:25 22 be present. He would come with numerous files --
10:38:28 23 he or she would come with numerous files and

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10:38:31 1 present their cases.

10:38:32 2 Q. Would it be in charge of the lieutenant
10:38:34 3 for internal affairs to present the case?

10:38:39 4 A. Yes.

10:38:39 5 Q. And then, would the inspector at all
10:38:41 6 present a case during the internal affairs process?

10:38:44 7 A. No.

10:38:44 8 Q. The inspector was more so there to
10:38:46 9 provide an opinion based on the evidence that's
10:38:49 10 provided?

10:38:49 11 A. Opinion and what knowledge he had
10:38:52 12 working with, you know, working with the inspector.
10:38:53 13 But it was the lieutenants that did the
10:38:54 14 investigations.

10:38:55 15 Q. Is there some sort of a vote with the
10:39:05 16 other persons who are present for the internal
10:39:10 17 affairs review process on whether -- on what the
10:39:10 18 finding would be?

10:39:11 19 A. Not a vote. I would ask opinions and
10:39:14 20 then I would make the final determination if I
10:39:16 21 believed it was sustained or not sustained or
10:39:17 22 unfounded.

10:39:18 23 Q. So it would just be your -- your

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10:39:22 1 finding of the evidence would be what would
10:39:25 2 determine the outcome for the case?

10:39:27 3 **A.** Correct, based on other people's
10:39:30 4 opinions and based on my own opinion.

10:39:33 5 In some cases if I didn't do the review the
10:39:35 6 deputy would do the review and make the
10:39:38 7 determination. But most of the time I did the
10:39:40 8 reviews.

10:39:40 9 **Q.** And which -- that would be the deputy
10:39:43 10 commissioner, correct?

10:39:44 11 **A.** That would be, correct. At the time,
10:39:44 12 could be either one. But in my place it was
10:39:47 13 usually Lockwood if I needed him to sub in for me.

10:39:52 14 **Q.** And which title for deputy commissioner
15 would Lockwood have had during your tenure?

10:40:08 16 **A.** Administrative.

10:40:08 17 **Q.** And was Mr. Lockwood the deputy
10:40:15 18 commissioner for admin during your entire tenure as
10:40:19 19 police commissioner?

10:40:19 20 **A.** Yes.

10:40:20 21 **Q.** When you were deputy commissioner for
10:40:23 22 the day-to-day activities -- day-to-day actions,
10:40:28 23 was Mr. Lockwood the deputy commissioner for the

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10:40:31 1 admin at that time?

10:40:32 2 **A.** Yes.

10:40:32 3 **Q.** So that would have been from 2006 to
10:40:35 4 2010?

10:40:35 5 **A.** Correct.

10:40:36 6 **Q.** How would you make a determination
10:40:41 7 whether it would be you or Mr. Lockwood who would
10:40:44 8 sit in on the internal affairs review process?

10:40:45 9 **A.** I would sit on just about all of them,
10:40:49 10 unless there was some conflict. In most cases we
10:40:53 11 would just cancel the review and move the date.

10:40:56 12 But if there -- if there was a conflict or
10:40:57 13 if there was a conflict of interest, if I knew one
10:40:59 14 of the officers really well, I would turn it over
10:41:03 15 to let him handle the cases.

10:41:08 16 **Q.** So how often would you say that that
10:41:11 17 arose where there was a conflict of interest where
10:41:16 18 you knew the officer very well?

10:41:18 19 **A.** Not often.

10:41:20 20 **Q.** Was there ever a time where both you
10:41:27 21 and Mr. Lockwood had a conflict due to knowing
10:41:33 22 the -- an officer very well that was being
10:41:35 23 investigated?

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10:41:35 1 **A.** I don't recall.

10:41:37 2 **Q.** What sorts of evidence is presented to
10:41:44 3 you during an internal affairs review process?

10:41:47 4 **A.** All type of evidence. Whatever the
10:41:49 5 case -- whatever type of case it is, what the
10:41:51 6 evidence would be. If it was an accident being
10:41:53 7 investigated every accident -- they would give me
10:41:57 8 their opinion.

10:41:59 9 Would they present actual evidence? No.
10:42:00 10 But they would tell me about it and give an opinion
10:42:04 11 of the whole case. And we would go around the room
10:42:07 12 with legal counsel, internal affairs inspectors,
10:42:12 13 deputy commissioners and we all make a
10:42:14 14 determination based on the evidence that was
10:42:16 15 presented to me.

10:42:17 16 It wouldn't be like a court scenario where
10:42:19 17 they'd be laying out evidence. At times there may
10:42:22 18 be video. At times there may be other things, but
10:42:22 19 not the norm.

10:42:24 20 **Q.** As part of the internal affairs review
21 process, is there certain evidence that you would
10:42:29 22 expect to be present for the internal affairs
10:42:32 23 review process?

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10:42:32 1 **A.** Depending on the file.

10:42:33 2 **Q.** Would you expect there to be statements
10:42:36 3 from the complainant?

10:42:36 4 **A.** There was definitely statements in all
10:42:38 5 the cases with complainant's, correct --

6 **Q.** I mean, where --

10:42:41 7 **A.** -- generally speaking.

10:42:43 8 **Q.** I'm sorry. Who would take those
10:42:46 9 statements?

10:42:46 10 **A.** The investigator.

10:42:47 11 **Q.** Was there a requirement for the
10:42:49 12 investigator to take those statements from the
10:42:52 13 witness?

10:42:53 14 **A.** It would be part of the procedure.
10:42:59 15 Some complainants wouldn't give statement, so that
10:43:02 16 would be a reason why they wouldn't have one,
10:43:04 17 but -- and also a lot of cases were initiated from
10:43:10 18 the department. Meaning, so if an officer was
10:43:12 19 involved -- we'll go with an accident -- was
10:43:13 20 involved in an accident, that would be a
21 departmental initiation of the accident. Be it he
10:43:19 22 ran into a tree. It would be something along those
10:43:22 23 lines. That would be something initiated by the

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10:43:25 1 department.

10:43:25 2 **Q.** Who would initiate those complaints?

10:43:30 3 **A.** Procedure, meaning, if there was an
10:43:31 4 accident you have to notify internal affairs, the
10:43:34 5 supervisor. They would notify radio. And somebody
10:43:36 6 would be called in if there was nobody working.

10:43:39 7 **Q.** If a police vehicle struck an
10:43:41 8 individual or pedestrian there would be an internal
10:43:45 9 affairs process?

10:43:47 10 **A.** Correct.

10:43:47 11 **Q.** Do you know what the process is for
10:43:54 12 commencing an internal affairs review if a notice
10:43:59 13 of claim is filed against the city the Buffalo?

10:44:02 14 **MS. HUGGINS:** Form. You can answer.

10:44:02 15 **THE WITNESS:** The notice of claim if it was
10:44:03 16 filed, generally speaking in those cases a lot of
10:44:06 17 times that's the first time internal affairs hears
10:44:10 18 about a case.

10:44:11 19 Many times the complainants don't come to
10:44:13 20 internal affairs. They'll file a lawsuit and that
10:44:17 21 will trigger an internal affairs investigation.

22 **BY MR. DAVENPORT:**

10:44:23 23 **Q.** Now, is that part of the policies and

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10:44:27 1 procedures that the filing of the Notice of Claim
10:44:30 2 would trigger an internal affairs review process?

10:44:32 3 **A.** I don't know as to the policies and
10:44:33 4 procedures, but that's what was done.

10:44:36 5 **Q.** Do you know if that was done every
10:44:38 6 time?

10:44:38 7 **A.** It should be. And again, sometimes
10:44:41 8 there's not a whole lot there that they can
10:44:45 9 investigate. Because a lot of times attorneys, as
10:44:47 10 you know, won't let their clients talk to the
10:44:49 11 investigators depending on what the lawsuit is,
10:44:53 12 depending on what's going on until after the --
10:44:56 13 after the lawsuit.

10:44:57 14 **Q.** And would that be the same process for
10:45:00 15 if a -- just -- a complaint connecting a lawsuit
10:45:03 16 was filed against the city of Buffalo? Would it be
10:45:06 17 the same process as filing a notice of claim for
10:45:10 18 commencing an internal affairs review process?

10:45:13 19 **MS. HUGGINS:** Form. You can answer.

10:45:13 20 **THE WITNESS:** I believe, that we would
10:45:14 21 receive the Notice of Claim and open up a case.
10:45:17 22 Sometimes we could investigate it and sometimes we
10:45:21 23 couldn't based on what the complaint was,

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10:45:25 1 cooperation from the complainant and whatever we
10:45:26 2 could do.

10:45:26 3 So sometimes that investigation had to wait
10:45:29 4 until the end of the lawsuit depending on what
10:45:31 5 we -- who we could talk to or not. And that
10:45:35 6 wouldn't just be involved in accident cases, all
10:45:37 7 cases.

8 **BY MR. DAVENPORT:**

10:45:41 9 **Q.** So waiting until after the lawsuit,
10:45:43 10 that would be based on a conversation that someone
10:45:46 11 with internal affairs would have with an attorney,
10:45:50 12 where the attorney says you can't speak with my
10:45:53 13 client?

10:45:53 14 **A.** Yes. And it happened quite often,
10:45:55 15 correct. And in some cases attorneys did let their
10:45:59 16 clients speak.

10:46:01 17 **Q.** If the attorneys let their client
10:46:04 18 speak, would the internal affairs review process
10:46:06 19 proceed as it normally would?

10:46:08 20 **A.** Yes.

10:46:10 21 **Q.** Would review of the Notice of Claim and
10:46:14 22 lawsuit complaint be part of the internal affairs
10:46:19 23 review process?

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10:46:20 1 **A.** Lawsuit complaint?

10:46:21 2 **Q.** The complaint commencing a lawsuit.

10:46:24 3 **A.** Information from the complaint?

10:46:27 4 **Q.** Yes.

10:46:27 5 **A.** Maybe, but, again, they would wait
10:46:30 6 until they could complete their investigation. If
10:46:32 7 you had a complainant who would cooperate, I guess,
10:46:34 8 that would be an interview.

10:46:36 9 But at the time it's just the complaint
10:46:39 10 itself, written material, they would sit there and
10:46:42 11 wait until they get more evidence before they bring
10:46:45 12 it for review.

10:46:47 13 **Q.** Was it ever brought to your attention
10:46:49 14 that a Notice of Claim had been filed against the
10:46:54 15 city of Buffalo and no internal affairs review
10:46:56 16 process had started?

10:46:56 17 **A.** I don't recall that.

10:46:57 18 **Q.** If it had been brought to your
10:47:01 19 attention, what actions would you have taken?

10:47:03 20 **A.** If there was a lawsuit Notice of Claim,
10:47:09 21 generally speaking, I don't recall any time that
10:47:10 22 they didn't open up a case. Or -- and again, it
10:47:13 23 could sit dormant until they get more information,

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10:47:18 1 but there would be a case waiting for more
2 information.

10:47:22 3 I don't know or I don't recall any situation
10:47:24 4 that was ever brought up to me that that didn't
10:47:26 5 occur. It could have, but I don't recall.

10:47:29 6 Q. Now, before your deposition today, did
10:47:31 7 you review any documents?

10:47:33 8 A. I did not.

10:47:34 9 Q. When you were served with the complaint
10:47:38 10 initially in this case, did you review the
10:47:43 11 complaint?

10:47:43 12 A. Months ago I might have reviewed the
10:47:46 13 complaint before -- prior to COVID. I did not
10:47:51 14 today.

10:47:53 15 Q. Did you happen to review the video that
10:47:58 16 was provided with that complaint?

10:48:00 17 A. I did not.

10:48:01 18 Q. Prior to your deposition today, have
10:48:03 19 you seen that video?

10:48:04 20 A. I seen it on the news. I believe,
10:48:08 21 that's the case.

10:48:09 22 Q. Do you know if a Notice of Claim was
10:48:11 23 filed in this case?

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10:48:12 1 | **A.** I do not.

10:48:13 2 Q. If I told you that a Notice of Claim
10:48:18 3 had been filed in March of 2017, do you have any
10:48:21 4 reason to believe that that's not true?

10:48:22	5	A.	I don't know that to be true or not
10:48:24	6		true.

10:48:24 7 Q. Did you happen to look at the date for
10:48:27 8 when the Notice -- when the complaint was filed in
10:48:30 9 this case?

10:48:30 10 **A.** I did not.

10:48:31 11 Q. If I told you that it was filed in
10:48:32 12 March of 2018, would you have any reason to believe
10:48:35 13 that that's not true?

10:48:36 14 **A.** Again, I wouldn't know one way or the
10:48:39 15 other.

10:48:40 16 Q. Do you know if there was an internal
10:48:45 17 affairs investigation for Mr. Kistner's claim?

10:48:48 18 | **A.** I do not.

19

20 The following was marked for Identification:

21 EXH. 37 Letter to Mr. Kistner from
22 Internal Affairs Division
23 dated August 13, 2020.

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10:48:54 1 **BY MR. DAVENPORT:**

10:48:54 2 **Q.** Mr. Derenda, I'm going to show you
10:50:38 3 what's been marked as Exhibit 37. Do you recognize
10:50:40 4 this document, sir?

10:50:41 5 **A.** I do not.

10:50:44 6 **Q.** Have you ever seen a document like this
10:50:46 7 before?

10:50:47 8 **A.** This particular document? I do not
10:50:50 9 recognize this particular document. I have seen
10:50:52 10 documents like this, correct.

10:50:54 11 **Q.** And what type of a document would this
10:50:58 12 be?

10:50:58 13 **A.** This is a -- this is just a letter to
10:51:09 14 the complainant stating the outcome of the case,
10:51:13 15 sustained, not sustained or unfounded.

10:51:15 16 **Q.** Now, is this the same type of letter
10:51:18 17 that you would have sent during your tenure as
10:51:20 18 commissioner?

10:51:20 19 **A.** I wouldn't send it, internal affairs
10:51:23 20 would have sent it.

10:51:25 21 **Q.** Is this the same type of letter
10:51:27 22 internal affairs would have sent?

10:51:28 23 **A.** Yes.

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10:51:29 1 Q. Now do you --

2 MS. HUGGINS: I apologize for interrupting.

3 MR. DAVENPORT: Sure.

4 MS. HUGGINS: The last exhibit we marked
5 previously was 37. If we could have this one
6 marked as 38. So I just --

7 MR. DAVENPORT: That's why 37 was sticking
8 out for me.

9 MS. HUGGINS: Yup.

10 THE REPORTER: I can change it. Seven can
11 be changed to eight easily.

12 MR. DAVENPORT: That's okay. Thank you.

13 THE REPORTER: Is that okay with you?

14 MR. DAVENPORT: Yes, that's fine with me.
15 Thank you. Very nice.

16 The following was marked for Identification:

17 Corrected from Letter to Mr. Kistner from
18 EXH 37 to EXH. 38 Internal Affairs Division
19 dated August 13, 2020.

20 BY MR. DAVENPORT:

10:52:06 21 Q. Now, do you see where James Kistner is
10:52:10 22 listed on the letter?

10:52:11 23 A. Yes.

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10:52:12 1 Q. Is that the same place where the
10:52:16 2 complainant's address would have been listed?

10:52:18 3 A. It appears to be.

10:52:19 4 Q. So would it be fair to say that
10:52:22 5 Mr. Kistner was the complainant for this action?

10:52:25 6 A. Correct.

10:52:25 7 Q. And now, do you see where it says the
10:52:28 8 internal affairs process was commenced or
10:52:32 9 initiated?

10:52:33 10 A. Based on a thorough review of this
10:52:35 11 case, yes.

10:52:36 12 Q. Okay. And what's that date?

10:52:37 13 A. Initiated on December 19th, 2019.

10:52:45 14 Q. Now, you said that you watched news
10:52:48 15 reports on Mr. Kistner's case, correct?

10:52:51 16 A. I seen news reports, correct.

10:52:53 17 Q. Do you know when those news reports
10:52:56 18 first aired?

10:52:57 19 A. I do not recall.

10:52:58 20 Q. Do you recall which news station aired
10:53:04 21 those reports?

10:53:06 22 A. I usually watch channel 4, so I'll make
10:53:11 23 that assumption. But I do flip around a little

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10:53:11 1 bit.

10:53:11 2 Q. Do you believe that the news reports
10:53:14 3 would have been on channel WIVB?

10:53:16 4 A. I believe so.

10:53:18 5 Q. Do you know if the first time that you
10:53:19 6 watched the news stories would have been in
10:53:23 7 December of 2019?

10:53:24 8 A. I think, it would have been recently
10:53:27 9 that I seen something on TV about it.

10:53:30 10 Q. And when you say recently, do you refer
10:53:32 11 to the last couple of months?

10:53:33 12 A. Probably, within the last month or so.

10:53:36 13 Q. Okay. But you didn't watch a news
10:53:41 14 story that was on December 19th of 2019?

10:53:43 15 A. Not to my recollection.

10:53:46 16 Q. Now, the December 19th of 2019 date,
10:53:50 17 that's after March of 2017, correct?

10:53:52 18 A. Correct.

10:53:54 19 Q. It's nearly three years after March of
10:53:57 20 2017.

10:53:59 21 A. At the time, pretty close.

10:54:00 22 Q. So according to your reading of this
10:54:03 23 letter, the internal affairs investigation wouldn't

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10:54:06 1 have started from nearly three years after the
10:54:08 2 Notice of Claim had been filed?

10:54:10 3 **A.** So apparently, has investigated the
10:54:14 4 complaint you initiated on December 19th, 2019. So
10:54:17 5 they're responding to his complaint that apparently
10:54:20 6 was filed on that date.

10:54:24 7 **Q.** Has internal affairs ever investigated
10:54:29 8 complaints -- well, actually -- I'm sorry. I'm
10:54:33 9 going to retract that question.

10:54:35 10 Does internal affairs start an investigation
10:54:41 11 based on news reports that are aired?

10:54:43 12 **A.** Sometimes, the possibility could exist,
10:54:45 13 yes.

10:54:45 14 **Q.** And who would make that determination
10:54:50 15 if they saw a news report and an internal affairs
10:54:52 16 investigation hadn't been started?

10:54:52 17 **A.** Well, again, it might be brought to
10:54:54 18 their attention, it could be brought to another
10:54:56 19 supervisors attention. I can recall seeing a news
10:54:59 20 report of an incident of brutality on TV and
10:55:03 21 obviously initiated a case immediately.

10:55:06 22 But in that case I contacted the
10:55:12 23 US Attorneys Office. So I have initiated cases if

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10:55:14 1 I've seen something to do, but I'm sure it could
10:55:17 2 be.

10:55:17 3 Q. Do you recall who that individual was
10:55:20 4 that you saw on TV where you initiated?

10:55:23 5 A. I don't recall really. It was a high
10:55:26 6 profile incident where the officer was arrested and
10:55:29 7 charged. Cirulli -- Cirullo -- I don't recall the
10:55:33 8 officer's name.

10:55:33 9 Q. Was the first name John?

10:55:35 10 A. Could be.

10:55:36 11 Q. And was that where the officer had
10:55:40 12 struck a man with his hand, a slap?

10:55:44 13 A. I believe, handcuffed. Yeah, I believe
10:55:47 14 that was the case.

10:55:48 15 I remember seeing it on TV and getting in
10:55:51 16 touch with, like, US Attorney Bill Hochul. And I
10:55:55 17 might have called some other people.

10:55:57 18 Q. And when you had contacted the
10:55:59 19 US Attorney's Office, did you give them any
10:56:01 20 direction at that point?

10:56:02 21 A. We don't give -- we don't give them a
10:56:04 22 direction, they're aware of it. And they would
10:56:06 23 also pass it on to the proper people to

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10:56:09 1 investigate.

10:56:10 2 So whenever there was a criminal action
10:56:12 3 internal affairs investigation would be on hold
10:56:15 4 until the criminal action was done. So meaning,
10:56:19 5 that the district attorney was investigating a
10:56:21 6 criminal complaint. It would be on hold, the
10:56:25 7 internal affairs investigation until they were done
10:56:26 8 with it.

10:56:27 9 And that would be the same regarding the
10:56:39 10 US Attorney's Office.

10:56:39 11 **Q.** Besides you actually seeing a news
10:56:47 12 report for what you believe should commence an
10:56:52 13 internal affairs investigation, are there any other
10:56:54 14 officers who could view a news story and then
10:56:58 15 commence an internal affairs investigation based on
10:57:01 16 what they see?

10:57:02 17 **A.** The inspector from internal affairs
10:57:05 18 deputy commissioner. Another officer could refer
10:57:08 19 it to internal affairs. An internal affairs
10:57:10 20 investigator could have seen it and spoke to the
10:57:14 21 inspector about it and commenced an investigation.

10:57:16 22 I guess, there's a lot of ways that could
10:57:19 23 have happened.

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10:57:21 1 Q. Do you know if Mr. Lockwood has the
10:57:27 2 same protocol or policy in place that wherever a
10:57:29 3 Notice of Claim is filed an internal affairs
10:57:34 4 investigation commences?

10:57:35 5 A. I don't if there was -- I don't know
10:57:36 6 what he has in place currently. And I don't know
10:57:38 7 if there was a policy in place. But I know that's
10:57:42 8 what took place.

10:57:43 9 I've been told about a Notice of Claim that
10:57:47 10 would initiate an investigation. Whether it's
10:57:47 11 written policy or not, I don't recall.

10:57:50 12 Q. Okay. Do you know who you were told
10:57:52 13 that by?

10:57:53 14 A. Probably, by the internal affairs
10:57:57 15 inspector.

10:57:57 16 Q. Okay. Do you recall who the internal
10:58:01 17 affairs inspector --

10:58:01 18 A. Harry McCullen.

10:58:03 19 Q. And was he the internal affairs
10:58:07 20 inspector during your entire tenure as police
10:58:07 21 commissioner?

10:58:07 22 A. He was not.

10:58:09 23 Q. When approximately was Harry McCullen

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10:58:12 1 appointed?

10:58:14 2 **A.** It was -- Pat Stafford was the internal
10:58:18 3 affairs inspector, he retired. And then I put
10:58:20 4 Harry in that position. He was captain of internal
10:58:24 5 affairs at the time. We moved him into that
10:58:26 6 position he made -- he actually made inspector. He
10:58:28 7 was put in that position.

10:58:31 8 **Q.** Would Harry McCullen have been the
10:58:33 9 inspector on January 1st, 2017?

10:58:36 10 **A.** I want to say, yes. I know he retired.
10:58:41 11 He retired before I did. But I believe he was
10:58:43 12 probably still the inspector.

10:58:45 13 **Q.** And then who would have been the
10:58:48 14 inspector who was appointed just after Harry?

10:58:50 15 **A.** Rob Rosenswie, I believe.

10:58:52 16 **Q.** And do you know approximately when he
10:58:56 17 was appointed to inspector?

10:58:56 18 **A.** I don't. Right after Harry left. I'm
10:58:59 19 not sure what the day, whether it was months before
10:59:00 20 me or -- I'm not sure.

10:59:06 21 **Q.** Now, when did you put in place the
10:59:11 22 policy that any police involved motor vehicle
10:59:16 23 accident would trigger an internal affairs

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10:59:18 1 investigation?

10:59:18 2 **A.** It was after 2010 when I was appointed.
10:59:23 3 I'm not sure of the date. 2011, 2012, somewhere
10:59:27 4 around there.

10:59:28 5 **Q.** And after you put that policy in place
10:59:30 6 in 2012, were there any changes to that policy?

10:59:35 7 **A.** From the time it was put in place --
10:59:36 8 again, after -- until the day I left they would
10:59:40 9 have called internal affairs if an accident took
10:59:43 10 place.

10:59:43 11 **Q.** Would there have been any changes or
10:59:46 12 revisions to the policy? Just changing language?
10:59:49 13 Or changing -- adding circumstances where internal
10:59:51 14 affairs would be obligated to go --

10:59:55 15 **A.** Not to my recollection. But every
11:00:01 16 accident needed to be investigated, that was my
11:00:03 17 policy. Even minor accidents.

11:00:07 18 **Q.** When you put that policy in place, who
11:00:10 19 did you notify?

11:00:11 20 **A.** That was notified through the deputies,
11:00:15 21 the inspector, everybody knew about the policy.
11:00:19 22 Written policy would have went right down, would
11:00:20 23 have went down to the command staff to lieutenants,

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11:00:22 1 supervisors, officers knew the policy.

11:00:24 2 Q. Was there any training session on that
11:00:29 3 new policy?

11:00:30 4 A. Not that I believe. The policy is
11:00:34 5 simple, if you're involved in an accident call
11:00:37 6 internal affairs.

11:00:41 7 Q. As part of that policy, would you
11:00:45 8 expect officers to call in internal affairs if an
11:00:49 9 individual had thrown himself at a police vehicle?

11:00:52 10 A. Thrown himself at a police vehicle?

11:00:55 11 Q. Yes.

11:00:56 12 A. The policy was for an accident. Any
11:00:58 13 officer involved accident.

11:01:01 14 Q. So if an individual threw himself at
11:01:04 15 the police vehicle, even though a police vehicle
11:01:06 16 may have been damaged, that wouldn't count as a
11:01:10 17 motor vehicle accident?

11:01:10 18 A. Might be counted as criminal mischief.
11:01:13 19 Again, I don't know the circumstances. Any
11:01:19 20 accident they're involved in needed to call
11:01:21 21 internal affairs.

11:01:22 22 If it was an individual that damaged a
11:01:25 23 police car, I don't believe that's an accident.

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11:01:29 1 Deliberately or somehow damage a police car that
11:01:33 2 may not qualify as an accident.

11:01:36 3 Q. As part of that policy that you put in
11:01:39 4 place, would lieutenants also be expected to go to
11:01:43 5 the scene and investigate an accident involving a
11:01:46 6 police vehicle?

11:01:46 7 A. If there was an accident involved the
11:01:49 8 lieutenant would go to the scene, notify the 911
11:01:51 9 lieutenant and the officer would do it, too,
11:01:54 10 through the radio.

11:01:55 11 And 911 would notify -- and they start
11:01:57 12 making the calls. The 911 lieutenant would start
11:01:59 13 making the calls if somebody was not working to get
11:02:03 14 some investigator to the scene.

11:02:09 15 Q. Would internal affairs arrive at the
11:02:13 16 scene before or after the lieutenant?

11:02:15 17 A. Generally speaking, after especially if
11:02:19 18 they weren't working. They work days. So any
11:02:22 19 accident that took place after the 9 to 5 they
11:02:26 20 would be called in.

11:02:28 21 The -- there could be a scenario where they
11:02:32 22 would arrive before, but highly unlikely.

11:02:34 23 Q. So the internal affairs investigations

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11:02:38 1 would generally take place during the hours of
11:02:41 2 9 to 5?

11:02:42 3 **A.** No, or they would be called in for any
11:02:46 4 accident or other investigation that they needed to
11:02:48 5 be called in on.

11:02:49 6 **Q.** So they would more so be on call at
11:02:50 7 that time?

11:02:51 8 **A.** Correct.

11:02:52 9 **Q.** And would those -- would that be a
11:02:56 10 communication to -- through the radio if it was
11:02:58 11 after hours? Or would it be through personal cell
11:03:02 12 phones?

11:03:02 13 **A.** It would -- communication they would be
11:03:04 14 called from the 911 lieutenant. Whether they would
11:03:07 15 be calling their home phone, on their cell phone,
11:03:10 16 the 911 lieutenant would make the call.

11:03:13 17 Whoever was on call that day, that night
11:03:15 18 would come in and do the investigation. And they
11:03:17 19 took turns who was on call.

11:03:25 20 **Q.** If -- if there's a city involved police
11:03:29 21 accident -- police vehicle involved accident, how
11:03:34 22 would you expect the officers to communicate with
11:03:38 23 their lieutenant? Would it be through the radio?

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11:03:40 1 Or personal cell phone?

11:03:42 2 **A.** They would call him through the radio.

11:03:43 3 They may call him on the cell phone. They may ask

11:03:47 4 for him to respond if there was an accident.

11:03:50 5 Again, there's no provided phones for every

11:03:53 6 officer or supervisor in the city. I don't believe

11:03:58 7 there was then, I don't believe there is now.

11:04:00 8 **Q.** When you say no phones that are

11:04:02 9 provided, you're talking about personal cell

10 phones?

11:04:07 11 **A.** Correct.

11:04:07 12 **Q.** But it doesn't matter if they

11:04:08 13 communicate through personal cell phones or radio?

11:04:11 14 **A.** If they call -- they would -- usually

11:04:13 15 call on the radio that there was an accident. 911

11:04:16 16 would notify the lieutenant or the lieutenant would

11:04:19 17 be monitoring the radio and come down.

11:04:23 18 Is there a case where somebody could have

19 called somebody on the cell phone? I believe so.

11:04:25 20 Probably.

11:04:25 21 **Q.** And that wouldn't violate any policies

11:04:28 22 or procedures?

11:04:29 23 **A.** Not that I recall.

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11:04:34 1 **Q.** When a -- when a police officer
11:04:37 2 notifies their lieutenant of a motor vehicle
11:04:40 3 accident -- a police involved motor vehicle
11:04:44 4 accident, would you expect the lieutenant to ask
11:04:46 5 the officer what he saw?

11:04:49 6 **A.** In cases or to call internal affairs
11:04:52 7 for the investigation. I believe that sometimes
11:04:55 8 they may discuss what took place or they might wait
11:04:59 9 for the internal affairs investigation. I guess,
11:05:01 10 that would be dependant on each individual.

11:05:04 11 **Q.** If the officers told the lieutenant
11:05:06 12 that a man threw himself at the police vehicle,
11:05:11 13 would you ask -- would you expect the lieutenant to
11:05:14 14 ask the officer if he was driving the vehicle that
11:05:17 15 the man threw himself at?

11:05:19 16 **MS. HUGGINS:** Form. You can answer.

11:05:20 17 **THE WITNESS:** If I expect them to? Was he
11:05:26 18 told that? Did he ask him? Again, I guess
11:05:26 19 depending on the circumstances.

20 **BY MR. DAVENPORT:**

11:05:32 21 **Q.** In the circumstances where a lieutenant
11:05:36 22 is not at the scene and receives a personal
11:05:39 23 phone -- a personal cell phone call from an

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11:05:41 1 individual officer saying that a man threw himself
11:05:43 2 at a police vehicle.

11:05:45 3 Would you expect the lieutenant to ask the
11:05:47 4 officer if it was his vehicle that he threw himself
11:05:50 5 at?

11:05:51 6 **MS. HUGGINS:** Form. You can answer.

11:05:51 7 **THE WITNESS:** I believe he would expect
11:05:53 8 him -- he would ask that. What happened? If he
11:05:56 9 threw himself at the vehicle.

10 **BY MR. DAVENPORT:**

11:05:59 11 **Q.** And do you know if the lieutenant in
11:06:03 12 this case -- in Mr. Kistner's case asked the police
11:06:09 13 officer if Mr. Kistner threw himself at his police
11:06:13 14 vehicle?

11:06:13 15 **A.** I do not know.

11:06:18 16 **Q.** Would you also expect the lieutenant to
11:06:22 17 ask the police officer if it wasn't his police
11:06:26 18 vehicle that the man threw himself at, how he saw
11:06:29 19 this man throw himself at the police vehicle?

20 **A.** I guess --

11:06:32 21 **MS. HUGGINS:** Form. You can answer.

11:06:33 22 **THE WITNESS:** I guess, circumstances would
11:06:35 23 dictate what happened. Again, I don't have all the

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11:06:39 1 facts.

2 **BY MR. DAVENPORT:**

11:06:47 3 **Q.** If an individual threw himself at a
11:06:50 4 police vehicle and the officers claimed that there
11:06:52 5 was damage that was done to the vehicle, would
11:06:56 6 there be any sort of investigation that would
11:06:59 7 commence immediately afterwards?

11:07:01 8 **MS. HUGGINS:** Form. You can answer.

11:07:02 9 **THE WITNESS:** An investigation? When you
11:07:04 10 say threw himself into a vehicle, deliberately
11:07:09 11 damaging the vehicle? If somebody did that, I
11:07:12 12 believe, they would be charged with criminal
13 mischief.

11:07:16 14 And I don't believe that would be considered
11:07:17 15 an accident. Again, I don't have knowledge of the
11:07:21 16 case.

17 **BY MR. DAVENPORT:**

11:07:23 18 **Q.** Now, if part of one of the elements for
11:07:30 19 criminal mischief is a certain amount of damage
11:07:33 20 that's caused to the vehicle, how would the
11:07:36 21 officers prove the amount of damage that was done
11:07:38 22 to a vehicle?

11:07:39 23 **A.** Probably, would have to get an estimate

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11:07:42 1 for collision or whatever -- for whatever damage,
11:07:44 2 mirror, whatever.

11:07:45 3 Q. And who would that estimate come from?

11:07:48 4 A. Well, I'm sure the city would get --
11:07:50 5 through the garage, police garage to fix.

11:07:53 6 Q. And do you know what police garage the
11:07:57 7 police department was using during your tenure?

11:07:58 8 A. The police garage down on Seneca Street.

11:08:04 9 Q. Do you know the address for that police
11:08:06 10 garage?

11:08:06 11 A. It's on Seneca and Chicago behind
11:08:11 12 Chef's. And they would send it out for an
11:08:13 13 estimate. They don't do collision work at the
11:08:14 14 police garage.

11:08:14 15 Q. And do you know who they would send
11:08:17 16 that to?

11:08:18 17 A. I do not.

11:08:19 18 Q. Would it vary?

11:08:20 19 A. It could.

11:08:22 20 Q. Do you know if there was a list of
11:08:27 21 collision mechanics that would work on police
11:08:31 22 vehicles?

11:08:32 23 A. I'm not aware of that.

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11:08:35 1 Q. Would those collision mechanics work
11:08:38 2 here in the city of Buffalo?

11:08:39 3 A. For the city of Buffalo?

11:08:40 4 Q. Work within the city of Buffalo.

11:08:42 5 A. I don't know that to be true or not.

11:08:45 6 Q. Would they be outside of the city of
11:08:47 7 Buffalo potentially?

11:08:49 8 A. I don't know how they would choose
11:08:50 9 vendors or where the list would come from. So
11:08:53 10 potentially they could be from different locations.

11:08:55 11 Q. So what type of work did the police car
11:09:00 12 garage on Seneca Street and Chicago, what type of
11:09:03 13 work would they do?

11:09:03 14 A. Mechanical, what they could handle.
11:09:06 15 Oil changes, brakes, things of that nature.
11:09:15 16 Batteries.

11:09:15 17 Q. Did they do private work for
11:09:18 18 individuals who weren't police officers?

11:09:21 19 A. Meaning --

20 Q. Would --

11:09:24 21 A. -- individual job?

11:09:24 22 Q. At the shop on Seneca Street and
11:09:27 23 Chicago, would they perform work for private

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11:09:30 1 citizens?

11:09:30 2 **A.** No.

11:09:31 3 **Q.** So they just exclusively worked for the
11:09:34 4 police department?

11:09:35 5 **A.** For the police garage, correct.

11:09:37 6 **Q.** They would have been hired by the
11:09:39 7 city of Buffalo?

11:09:39 8 **A.** Correct.

11:09:42 9 **Q.** Prior to an officer bringing their car
11:09:46 10 to the police garage, would they have to fill out
11:09:50 11 any forms about what was wrong with the vehicle and
11:09:53 12 why they were bringing it in?

11:09:55 13 **A.** They should. I mean, there's a form
11:09:57 14 whether you need an oil change or whatever issues.
11:10:00 15 You would have to bring it in and leave a form.

11:10:02 16 **Q.** And that would have been completed by
11:10:04 17 the officer driving the vehicle?

11:10:07 18 **A.** Could have been completed by an officer
11:10:09 19 on a different shift, depending on what they were
11:10:11 20 taking it down for. Could have been various
11:10:14 21 people -- officers.

11:10:15 22 **Q.** But it would be a patrol officer not a
11:10:18 23 lieutenant that would have completed that form,

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11:10:21 1 correct?

11:10:21 2 **A.** I guess, it could be done by a
11:10:24 3 lieutenant taking a vehicle down. It could be
11:10:26 4 either or.

11:10:28 5 **Q.** Was there a policy or procedure that
11:10:32 6 was in place that required officers to fill out
11:10:35 7 that form when they were bringing it in for
11:10:38 8 service?

11:10:39 9 **A.** There was a policy and there was a form
11:10:39 10 to fill out if you were bringing it down for
11:10:42 11 service, correct.

11:10:42 12 **Q.** Would an officer be subjected to
11:10:46 13 discipline if they did not complete that form?

11:10:48 14 **A.** I don't ever recall that being the
11:10:51 15 case.

11:10:52 16 **Q.** Would that -- would that be something
11:10:54 17 that an officer would be disciplined for, though,
11:10:58 18 if that had been the case for somebody?

11:11:00 19 **A.** Possibly.

11:11:01 20 **Q.** Is there discipline for officers who
11:11:05 21 don't complete necessary paperwork?

11:11:07 22 **A.** I guess, there could be.

11:11:10 23 **Q.** And who would that discipline come

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11:11:14 1 from?

11:11:14 2 **A.** Meaning, from the department? So that
11:11:15 3 would -- again, be something brought through
11:11:17 4 internal affairs, brought up to internal affairs.
11:11:20 5 Whether it from a supervisor if the officer didn't
11:11:22 6 do something, to internal affairs. And then right
11:11:25 7 up through the same process.

11:11:28 8 **Q.** So if a supervisor found an individual
11:11:31 9 not completing necessary paperwork, the supervisor
11:11:35 10 would be the person who would commence an internal
11:11:41 11 affairs investigation?

11:11:41 12 **A.** Who could send it up. Not all the time
11:11:44 13 do they or would they. If somebody didn't complete
11:11:47 14 something it may or may not result.

11:11:49 15 I don't remember too many cases where
11:11:51 16 paperwork cases that came before me.

11:11:57 17 **Q.** Would that be something -- would the
11:12:00 18 failure to fill out paperwork by a police officer
11:12:03 19 be something that the lieutenant can handle for
20 discipline?

11:12:06 21 **A.** We would handle it in-house and make
11:12:08 22 him redo it correctly.

11:12:10 23 **Q.** If they weren't completing the

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11:12:11 1 paperwork, would the supervisor then have the
11:12:15 2 police officer complete the necessary paperwork?

11:12:17 3 **A.** Possible.

11:12:23 4 **Q.** Now, for the cases where officers were
11:12:27 5 not filling out the necessary paperwork, were any
11:12:30 6 of those officers from C-District?

11:12:34 7 **MS. HUGGINS:** Form. You can answer.

11:12:34 8 **THE WITNESS:** I don't recall any of those
11:12:36 9 cases. Possibly, but I don't recall.

10 **BY MR. DAVENPORT:**

11:12:40 11 **Q.** Do you know if there were any sustained
11:12:46 12 internal affairs complaints for officers not
11:12:48 13 filling out necessary paperwork?

11:12:50 14 **A.** Off the top of my head, I don't recall.

11:12:57 15 **Q.** Now, you said that there was a
11:13:00 16 difference between not sustained and unfounded, I
11:13:03 17 believe it was, the other one?

11:13:04 18 **A.** Correct.

11:13:05 19 **Q.** And what would be the difference
11:13:08 20 between not sustained and unfounded?

11:13:09 21 **A.** Not sustained doesn't mean it didn't
11:13:11 22 happen, it just means I couldn't prove it.

11:13:13 23 **Q.** Do you know if there's a certain burden

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11:13:16 1 of proof that must be established for a sustained
11:13:21 2 versus not sustained findings?

11:13:21 3 **A.** I guess, it would be the commissioners
11:13:23 4 opinion.

11:13:26 5 **Q.** Turning back to Exhibit 38. Do you see
11:13:34 6 in the second paragraph where it says: At this
11:13:38 7 time to clearly prove your case?

11:13:42 8 **A.** Based on a thorough review of the case,
11:13:44 9 the Commissioner of Police has determined there is
11:13:44 10 not sufficient evidence at this time to clearly
11:13:48 11 prove your case and has determined that the case
11:13:53 12 disposition be carried as not sustained.

11:13:54 13 Which goes back to as I said, couldn't prove
11:13:59 14 the allegations.

11:13:59 15 **Q.** Now, clearly prove your case, is that
11:14:02 16 the same -- and I'm going to use the term burden of
11:14:07 17 proof. And you can tell me if you don't know what
11:14:08 18 that terms means -- if you want me to explain a
11:14:10 19 little bit further.

11:14:11 20 **A.** Burden of proof -- again, he -- not
11:14:14 21 sustained means he can't prove his case because
11:14:18 22 these cases have to go -- will have a chance to go
11:14:22 23 before an arbitrator.

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11:14:23 1 So you have an arbitrator sitting that will
11:14:24 2 make the final determination. If the city can't
11:14:27 3 prove its case, then it gets not sustained by an
11:14:35 4 arbitrator. So I can't look at this and go yup, I
11:14:36 5 sustain this. And at times I offer a penalty for
11:14:40 6 what I found.

11:14:41 7 So you did something the case is sustained,
11:14:43 8 I'm going to suspend you for 30 days. They can
11:14:47 9 fight that and not take that 30 days and go through
10 arbitration and have an arbitrator determine
11:14:54 11 whether it happened or not.

11:14:55 12 When it's not sustained that's basically
11:14:58 13 saying they couldn't prove it in front of an
11:15:02 14 arbitrator. They did not have enough evidence to
11:15:04 15 do that.

11:15:05 16 **MS. HUGGINS:** Form as to the last question.
11:15:07 17 And I'm just going to make an objection just based
11:15:08 18 on the timeframe. You're asking him about an
11:15:11 19 exhibit after his retirement, interpreting.

11:15:16 20 **MR. DAVENPORT:** Well, I'm just asking if the
11:15:17 21 burden of proof was the same.

11:15:20 22 **MS. HUGGINS:** And that's my objection is
11:15:21 23 you're asking about something from August 13, 2020.

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11:15:24 1 And he's already testified to the date of his
11:15:25 2 retirement as being January of 2018.

11:15:29 3 I don't have -- I don't have objections to
11:15:30 4 asking with regard to when he was the commissioner.

5 **BY MR. DAVENPORT:**

11:15:33 6 **Q.** That's -- I mean, that's kind of what
11:15:34 7 I'm asking. I'm asking on this form it says: At
11:15:39 8 this time to clearly prove your case.

11:15:42 9 And during the deposition you've used a
11:15:44 10 couple of times just the word proof -- rather than
11:15:46 11 clearly prove. My question is: Was clearly, was
11:15:51 12 that the same language that you would have used or
11:15:55 13 the same burden that you would have looked for
11:15:58 14 officers to prove?

15 **A.** I would look at the --

16 **MS. HUGGINS:** Hang on. Objection to form.
11:16:01 17 I just want to put this objection on the record. I
11:16:04 18 understand your question. Again, I don't have a
11:16:06 19 problem with you asking that in terms of his --
11:16:07 20 when he was commissioner.

11:16:09 21 But you continue to refer to Exhibit 38.
11:16:11 22 Which, again, is from August 13 of 2020, two years
11:16:16 23 after his retirement.

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11:16:18 1 **MR. DAVENPORT:** Correct. Because he's
11:16:19 2 reviewing this document where it says what the
11:16:22 3 burden is to prove the case.

11:16:24 4 And I'm asking if it -- it's the same burden
11:16:26 5 that was in place when he was the police
11:16:29 6 commissioner.

7 **MS. HUGGINS:** And you're asking him to
8 interpret a document for a position he hasn't
9 worked at --

11:16:34 10 **Q.** I'm not asking him to interpret the
11 document. I'm asking him, based on what he sees on
11:16:36 12 this document, is that the same burden that was in
11:16:38 13 place when he was the commissioner.

11:16:39 14 I'm not asking him to interpret the
11:16:43 15 document. I'm just asking him if this is the same
11:16:47 16 burden that was in place.

11:16:48 17 **MS. HUGGINS:** Okay. I will allow him to
11:16:50 18 answer that specific question.

11:16:52 19 **MR. DAVENPORT:** That's what I've been
11:16:54 20 asking.

21 **MS. HUGGINS:** Okay. I don't know if that --
22 it's a form objection. And I don't believe that's
11:16:56 23 been entirely clear from your questioning.

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11:16:59 1 **BY MR. DAVENPORT:**

11:16:59 2 **Q.** Okay. So Mr. Derenda, my question is
11:17:02 3 just simply, you've used the words --

11:17:06 4 **A.** Proof.

11:17:06 5 **Q.** -- proof. And I want to know, during
11:17:08 6 your tenure as commissioner was it clearly proof or
11:17:11 7 was it just proof?

11:17:11 8 **A.** In my mind -- in my time it was whether
11:17:14 9 I could prove the case or not. Whether the
11:17:16 10 investigators proved the case to me.

11:17:19 11 As I said, I got everybody's opinion from
11:17:22 12 corporation counsel to the internal affairs
11:17:25 13 inspector to the deputy commissioner. And then I
11:17:26 14 make my determination whether they could prove the
11:17:32 15 case to an arbitrator.

11:17:35 16 **Q.** Now, would the arbitrator be sitting in
11:17:42 17 on the internal affairs review process?

11:17:42 18 **A.** They would not. It would be a hearing
11:17:44 19 setup sometimes later, sometimes it was years
11:17:46 20 later.

11:17:48 21 **Q.** Who would request an arbitrator? Would
11:17:52 22 it be the police officer that was disciplined?

11:17:54 23 **A.** It would be the -- the police officer

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11:17:57 1 is represented by the Buffalo Police Benevolent
11:17:59 2 Association. And they would request a hearing.

11:18:02 3 So basically, if I found somebody -- if I
11:18:03 4 sustained some charges and I would say 30 days
11:18:07 5 suspension. They would request a hearing, they
11:18:09 6 would not accept that finding.

11:18:11 7 Therefore, go before an arbitrator. If I --
11:18:15 8 non -- not sustained case, obviously, there would
11:18:17 9 be no further proceedings.

11:18:19 10 Q. And what would the city of Buffalo's
11:18:21 11 role be during that arbitration process? Would you
11:18:24 12 have representatives there?

11:18:24 13 A. We would have an attorney from the city
11:18:27 14 that was assigned to the police.

11:18:28 15 Q. Would you also be there, as well?

11:18:30 16 A. Generally speaking, the
11:18:34 17 Deputy Commissioner Lockwood was at those hearings.

11:18:36 18 Q. During your tenure, do you know how
11:18:40 19 many arbitration hearings Deputy Lockwood was a
11:18:41 20 part of?

11:18:42 21 A. I don't know a number, but it was a
11:18:44 22 lot. Probably, all of them.

11:18:46 23 Q. Okay. And when you say all of them, do

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11:18:49 1 you mean, all times where there was a sustained
11:18:50 2 finding against one of the police officers?

11:18:52 3 **A.** All the times when there was
11:18:56 4 arbitration. So if it was sustained and you wanted
11:18:56 5 a hearing, hearings would get backed up. As I
11:19:01 6 said, it may take a year or two to get to them in
11:19:05 7 some cases. Or where the process was slowed down.
11:19:07 8 But he would attend those hearings.

11:19:10 9 **Q.** Would officers be entitled to an
11:19:14 10 arbitration for a not sustained finding?

11:19:16 11 **A.** No, it would be no further proceedings
11:19:19 12 at that point.

11:19:21 13 **Q.** Had you ever had a case where you found
11:19:24 14 that the evidence sustained the internal affairs
11:19:29 15 investigation or internal affairs complaint and you
11:19:31 16 were overturned by the arbitrator, have it be a not
11:19:35 17 sustained finding?

11:19:36 18 **A.** Yes.

11:19:37 19 **Q.** Do you know approximately how many
11:19:39 20 times that happened?

11:19:40 21 **A.** Too many.

11:19:41 22 **Q.** Do you know a certain percentage of
11:19:44 23 times that happened?

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11:19:45 1 **A.** I do not.

11:19:46 2 **Q.** Was it more than half?

11:19:48 3 **A.** I don't know. In my opinion, one is
11:19:53 4 too many.

11:19:55 5 **Q.** Now, the arbitrator, you're saying that
11:20:00 6 was somebody who's affiliated with the police
11:20:02 7 union?

11:20:02 8 **A.** No, it was selected by both the police
11:20:05 9 department and by the PBA. They select an
11:20:08 10 arbitrator for the hearing. They both agreed upon
11 the arbitrator. There was a -- there was an
11:20:13 12 agreement that we had one arbitrator that was
11:20:16 13 handling the discipline in the case.

11:20:16 14 **Q.** As was that agreement in the union
11:20:20 15 contract between the city of Buffalo Police
16 Department --

11:20:23 17 **A.** It wouldn't be in the contract it would
11:20:26 18 have been something separate, signed agreement.

11:20:27 19 **Q.** I'm just going to ask, just wait for me
11:20:29 20 to finish my question before you start answering
11:20:30 21 it. I just want to make sure the record stays
11:20:33 22 clear.

11:20:35 23 Do you know who that arbitrator was that was

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11:20:39 1 selected?

11:20:39 2 A. Yes.

11:20:39 3 Q. Who was that arbitrator?

11:20:40 4 A. Jeffrey Selchick.

11:20:43 5 Q. Is Jeffrey an attorney?

11:20:45 6 A. I believe he is.

11:20:46 7 Q. And does he work here in the city of

11:20:49 8 Buffalo?

11:20:50 9 A. He's not from Buffalo.

11:20:51 10 Q. Do you know where he's from?

11:20:53 11 A. I want to say Albany area, but I may be
11:20:57 12 wrong.

11:20:57 13 Q. Do you know if he's an arbitrator for
11:21:00 14 any other police departments and police unions?

11:21:03 15 A. I'm sure he is.

11:21:06 16 Q. Do you know, does the city of Buffalo
11:21:12 17 pay for these arbitration hearings?

11:21:14 18 A. We pay part of it and the union pays
11:21:17 19 part of it.

11:21:18 20 Q. And do you know what part the city of
11:21:20 21 Buffalo pays?

11:21:21 22 A. I would make the assumption 50/50 with
11:21:24 23 the union.

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11:21:32 1 Q. Have you negotiated any of the union
2 contracts between the city of Buffalo and the
3 police union?

11:21:40 4 A. The attorneys negotiate the contracts.
11:21:41 5 I've had some input.

11:21:43 6 Q. And what was your input?

11:21:45 7 A. Different things we wanted or needed,
11:21:47 8 we always didn't get. Again, the attorneys would
11:21:51 9 negotiate the contract. I believe, only one was
11:21:55 10 signed the time -- during the time I was
11:21:56 11 commissioner.

11:21:57 12 Q. Do you know when approximately that
11:21:59 13 union contract was signed?

11:22:02 14 A. Maybe around 2015. I'm not sure of the
11:22:05 15 date, but it was only one that we signed. I
11:22:08 16 believe, when I was commissioner.

11:22:11 17 Q. Is there a certain time period that
11:22:14 18 these union contracts stay in place?

11:22:17 19 A. For whatever's stipulated in the
11:22:19 20 contract.

11:22:19 21 Q. Do you know the contract that was
11:22:21 22 signed in 2015, was there a time period that was
11:22:24 23 stipulated to?

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11:22:25 1 **A.** I don't recall what the time period
11:22:27 2 was. Again, I'm not sure if it was 2015. I know
11:22:30 3 that there was one contract we were able to get.
11:22:33 4 It's very difficult to get a signed contract with a
11:22:36 5 union.

11:22:36 6 **Q.** And then do you know before
11:22:39 7 approximately 2015 when the previous union contract
11:22:42 8 would have been agreed to?

11:22:44 9 **A.** I don't recall. Again, you're using
11:22:49 10 2015, I don't know that date to be certain.

11:22:54 11 **Q.** I'll just -- instead of saying 2015,
11:22:56 12 I'll just say the union contract that was signed
11:22:59 13 during your tenure.

11:23:00 14 **A.** Correct.

11:23:01 15 **Q.** Okay. Now, for the union contract that
11:23:05 16 was signed during your tenure, what were certain --
11:23:09 17 what were certain negotiating points that you
11:23:09 18 wanted to have in the union contract?

11:23:12 19 **A.** I don't recall exactly. But it was --
11:23:15 20 it entailed raises. Many things were talked about,
11:23:20 21 few things ended up in the contract.

11:23:23 22 I know city residency was one of them. I
11:23:27 23 believe, it was a seven year or nine year city

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11:23:29 1 residency for new employees that was put in, but
11:23:34 2 that is sunsetted now. Different things we wanted
11:23:35 3 that never made it to the contract.

11:23:39 4 Again, negotiations between the PBA
11:23:41 5 attorneys and the city attorneys.

11:23:46 6 Q. As part of your negotiating points for
11:23:50 7 this contract, was there anything in there about
11:23:52 8 the internal affairs review process?

11:23:53 9 A. Not that I recall. I don't think I
11:24:00 10 would negotiate an internal affairs process. I
11:24:02 11 don't think that would have to be negotiated.

11:24:05 12 Q. So the PBA really wouldn't have much of
11:24:10 13 a say in the internal affairs review process.

11:24:13 14 A. In the review process, no. Again, they
11:24:16 15 have the hearing process if they have something to
11:24:18 16 say. Because, I believe, they're going under state
11:24:20 17 law that may allow us -- allows them to have
11:24:23 18 hearings for officers.

11:24:24 19 I can't make the final determination on
11:24:26 20 discipline if it's not accepted. Meaning, if they
11:24:29 21 choose not to accept my findings, they have the
11:24:34 22 option for a hearing before an arbitrator.

11:24:35 23 Q. And would that be the police union or

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1 the police officer who would have to accept the
11:24:39 2 findings?

11:24:39 3 **A.** It would have to be the officer through
11:24:41 4 the police union. The officer could request a
11:24:45 5 hearing.

11:24:45 6 **Q.** But that's typically done by a union
11:24:48 7 representative?

11:24:49 8 **A.** The officer talking to the union
11:24:52 9 representative that he wants a hearing.

11:24:55 10 **Q.** Do you know with the PBA, how many
11:24:58 11 representatives they have working for the PBA?

11:25:00 12 **A.** How many they have working? Meaning,
11:25:03 13 attorneys or --

11:25:06 14 **Q.** Well, when you say that a
11:25:08 15 representative would ask for an arbitration, would
11:25:11 16 that be an attorney with the PBA? Or would that
11:25:13 17 just be an employee?

11:25:15 18 **A.** He would have -- you would have, if you
11:25:17 19 had an informal hearing where you -- so you do
11:25:20 20 the -- you would do the internal affairs review.

11:25:22 21 The next step would be an informal hearing.
11:25:25 22 So I would look at the case, guilty of this charge
11:25:29 23 subsection and the penalty we want to impose is a

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11:25:34 1 30 day suspension.

11:25:36 2 And then the attorney for the PBA would be
11:25:38 3 there as the attorney for the officer and talking
11:25:43 4 with their client, the officer. They make the
11:25:46 5 determination whether they want to accept or they
11:25:48 6 would ask for a hearing. And that would take place
11:25:51 7 through the attorney for the PBA.

11:25:53 8 Q. When they make the request for the
11:25:54 9 hearing, the arbitration hearing, would that
11:25:57 10 request be made through you? Or somebody else?

11:25:59 11 A. They would make the request to the
11:26:01 12 department that they want a hearing. Then they
11:26:04 13 would be set up through Commission Lockwood's --
11:26:09 14 Deputy Commissioner Lockwood's office.

11:26:09 15 Q. And when you say the department, you
11:26:11 16 mean the police department?

11:26:11 17 A. Correct.

11:26:12 18 Q. Was there somebody within the police
11:26:15 19 department who that request would have been made
11:26:18 20 for arbitration?

11:26:19 21 A. The arbitration is still through the
11:26:22 22 deputy of administration. So he would be in that
11:26:24 23 process of setting up those arbitrations with the

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11:26:27 1 union.

11:26:28 2 Q. Okay.

11:26:28 3 A. And in my case it would have been
11:26:31 4 Lockwood's office.

11:26:31 5 Q. And the arbitration would have taken
11:26:36 6 place in Lockwood's office?

11:26:36 7 A. The arbitration would have been taken
11:26:39 8 in the conference room. Where a -- it's sort of
11:26:39 9 just, like, a little hearing. Where the arbitrator
11:26:42 10 sits at the head of the table and we bring
11:26:44 11 witnesses in from both sides. And it's not
11:26:48 12 informal, but not, like, a total court hearing.

11:26:52 13 Q. And would those witnesses include the
11:26:55 14 complainant?

11:26:55 15 A. It could.

11:26:57 16 Q. Do you know if there was a requirement
11:27:00 17 for the arbitrations to have witness statements
11:27:03 18 from the complainant?

11:27:04 19 A. I believe, that would be part of the
11:27:07 20 process. But I don't know if it was called a
21 requirement.

11:27:12 22 Q. Would the officers be required to give
11:27:14 23 statements during the arbitration hearing?

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11:27:17 1 **A.** Yes.

11:27:18 2 **Q.** Now, I just want to turn your
11:27:23 3 attention, again, to Exhibit 38. One question that
11:27:26 4 I have is for the not sustained findings, would
11:27:31 5 that be a finding that's after an arbitration
11:27:36 6 process? Or would that be a finding that's made by
11:27:39 7 the police commissioner?

11:27:40 8 **A.** I think it could be by both. So
11:27:43 9 initially if -- in this one it says, after a
11:27:46 10 thorough review of the case police commissioner
11:27:49 11 determined there's not sufficient evidence.

11:27:47 12 So this was determined by the commissioner
11:27:50 13 of police. If you go to a hearing and the hearing
11:27:54 14 officer would find it not sustained and the letter
11:27:57 15 would say that after a hearing it was found to be
11:28:01 16 insufficient and not sustained.

11:28:03 17 And that's the language, I believe, would
11:28:05 18 come from the arbitrator.

11:28:07 19 **Q.** Okay. So because it says that the
11:28:09 20 police commissioner has determined that there's not
11:28:11 21 sufficient evidence. That means that it would have
11:28:13 22 stopped at that process, there wouldn't have been
11:28:15 23 an arbitration?

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11:28:17 1 **A.** That would have been -- that would have
11:28:19 2 been the end of the review.

3 **Q.** Okay.

11:28:20 4 **MS. HUGGINS:** Form to the last question.

5 **BY MR. DAVENPORT:**

11:28:24 6 **Q.** All right. I'm going to start asking
11:28:25 7 some questions about the video. Which I'll need
11:28:28 8 some time to set up.

11:28:30 9 So if you want to take a bathroom break or
11:28:32 10 anything like that, you can certainly do that right
11 now.

12 **MS. HUGGINS:** Go off the record for a
13 moment?

14 **MR. DAVENPORT:** Yeah, let's go off.

15 **THE VIDEOGRAPHER:** Off the record at 11:28.

11:31:53 16 (Off the record.)

11:42:47 17 **THE VIDEOGRAPHER:** We are on the record at
11:42:51 18 11:42.

19 **BY MR. DAVENPORT:**

11:42:52 20 **Q.** All right. So Mr. Derenda, we talked
11:42:55 21 earlier about you watching news stories based on
11:42:59 22 this case involving Mr. Kistner. During those news
11:43:03 23 stories, was this one of the videos that you

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11:43:06 1 watched?

11:43:07 2 **MS. HUGGINS:** Form. You just have a still
11:43:08 3 of a video on the screen. Do you want to play it
11:43:13 4 and then ask the questions?

11:43:16 5 **MR. DAVENPORT:** Sure. We can do that. I'll
11:43:21 6 play the first 15 seconds or so of this video.

11:43:26 7 **MS. HUGGINS:** Can you identify the exhibit
11:43:29 8 and the file number.

9 **BY MR. DAVENPORT:**

11:43:30 10 **Q.** So we are reviewing Exhibit 11. It is
11:43:33 11 the third video on Exhibit 11. And it's number is
11:43:39 12 0620170101102529.

11:43:54 13 Mr. Derenda, let me know if you have any
11:43:58 14 trouble seeing the video. Now, based on what you
11:44:16 15 saw right there, was that one of the videos that
11:44:19 16 you saw during the news story?

11:44:22 17 **A.** I believe that it was.

11:44:23 18 **Q.** Okay. And was that the first time that
11:44:26 19 you saw that video was during the news story?

11:44:30 20 **A.** I don't believe I seen the video any
11:44:32 21 other place, but the news story. I had the news
11:44:36 22 on, I was doing something and I looked up and I
11:44:38 23 believe that was the video.

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11:44:38 1 Q. And that would have been the only time
11:44:41 2 that you had ever reviewed that video?

11:44:44 3 A. To my recollection.

11:44:45 4 Q. And you never reviewed this video
11:44:49 5 during your tenure as police commissioner?

11:44:52 6 A. I do not. I have no recollection of
11:44:54 7 reviewing this video.

11:44:57 8 Q. Okay. Now, do you see an individual
11:45:12 9 who is in the street?

11:45:14 10 A. Yes.

11:45:15 11 Q. And do you know who that individual is?

11:45:17 12 A. I do not.

11:45:19 13 Q. Do you have any reason to believe that
11:45:21 14 it's not Mr. Kistner?

11:45:24 15 A. From the video I couldn't tell you who
11:45:26 16 it is.

11:45:27 17 Q. But as you sit here today, do you have
11:45:29 18 any reason to believe that the individual who is
11:45:32 19 pictured in this video is not Mr. Kistner?

11:45:35 20 A. If you're telling me it's Mr. Kistner,
11:45:38 21 I believe you.

11:45:39 22 Q. Thank you. Do you see Mr. Kistner
11:45:42 23 where he is situated.

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11:45:43 1 **A.** Yes.

11:45:44 2 **Q.** Okay. And where is he currently
11:45:47 3 situated?

11:45:47 4 **A.** A few feet from the police vehicle.

11:45:49 5 **Q.** Okay. Now, approximately how far away
11:45:58 6 are the two police vehicles from each other?

11:46:01 7 **A.** I can't tell.

11:46:02 8 **Q.** Okay. Now, I'm going to have you watch
11:46:10 9 the first couple of seconds, the first 10 seconds.
11:46:16 10 And I just want you to generally describe what you
11:46:20 11 see.

11:46:22 12 **MS. HUGGINS:** Form.

13 **BY MR. DAVENPORT:**

11:46:35 14 **Q.** So Mr. Derenda, during the first
11:46:39 15 10 seconds of that video, what did you see?

11:46:39 16 **MS. HUGGINS:** Form. You can answer.

11:46:40 17 **THE WITNESS:** I see an individual walking
11:46:42 18 past one police vehicle that left and towards the
11:46:45 19 other police vehicle. And it appears they come in
11:46:47 20 contact.

21 **BY MR. DAVENPORT:**

11:46:50 22 **Q.** Now, when watching that video, did it
11:46:53 23 appear that the individual threw himself at the

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11:46:57 1 police vehicle?

11:46:57 2 **A.** It's really not clear. You see that
11:47:00 3 there's contact. But I can't tell you what took
11:47:02 4 place with what you're showing me.

11:47:05 5 **Q.** Now --

11:47:08 6 **A.** Inconclusive.

11:47:09 7 **Q.** In this -- in this type of situation
11:47:13 8 where it's, you know, based on what you see it's
11:47:17 9 inconclusive, if he threw himself at the police
11:47:20 10 vehicle or if the police vehicle struck the
11:47:22 11 individual.

11:47:22 12 Would you expect the supervisor to be called
11:47:25 13 to the scene by the officers?

11:47:27 14 **MS. HUGGINS:** Form. You can answer.

11:47:27 15 **THE WITNESS:** Again, based on what I see and
11:47:29 16 what the officers -- again, it's yes and no. From
11:47:34 17 what I see it's inconclusive. So if the officers
11:47:38 18 are saying he threw himself into the car, they may
11:47:42 19 or may not have called the supervisor.

20 **BY MR. DAVENPORT:**

11:47:46 21 **Q.** Do you believe that in watching this
11:47:48 22 video, it was conclusive enough that Mr. Kistner
11:47:51 23 threw himself at the police vehicle where internal

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11:47:54 1 affairs did not need to be called to the scene?

2 **A.** I'm saying --

11:47:57 3 **MS. HUGGINS:** Form.

11:47:57 4 **THE WITNESS:** I'm saying the video is
11:47:59 5 inconclusive to what took place, in my opinion.

6 **BY MR. DAVENPORT:**

11:48:04 7 **Q.** In this type of situation as a police
11:48:08 8 commissioner, would you want internal affairs to go
11:48:10 9 and review what happened?

11:48:11 10 **A.** I don't know all the circumstances. If
11:48:14 11 the complainant was injured. I don't know if it
11:48:17 12 was damage to the vehicle.

11:48:19 13 Again, for me to make an opinion on what I
11:48:22 14 know very little about or what I'm seeing in a
11:48:26 15 video that's inconclusive to what took place.

11:48:28 16 **Q.** Now, during your review of the
11:48:30 17 allegations in the complaint, do you know if
11:48:33 18 Mr. Kistner was criminally charged for what just
11:48:36 19 took place?

11:48:36 20 **A.** I don't believe I reviewed this
11:48:39 21 complaint.

11:48:42 22 **Q.** Now, in watching that video, did you
11:48:45 23 believe that Mr. Kistner intentionally threw

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11:48:50 1 himself at that police vehicle to sustain a
2 criminal mischief allegation?

11:48:55 3 **MS. HUGGINS:** Form.

11:48:55 4 **THE WITNESS:** Again, the video to me is
11:48:57 5 inconclusive.

6 **BY MR. DAVENPORT:**

11:49:03 7 **Q.** I'm going to show the witness what's
11:49:05 8 been marked as Exhibit 17. Now, Dan, in reviewing
11:49:20 9 that document that I just placed in front of you,
11:49:24 10 do you recognize what that document is?

11:49:26 11 **A.** Appears to be a charging document.

11:49:29 12 **Q.** Do you see who the individual is being
11:49:33 13 charged with the crime?

11:49:34 14 **A.** Yes.

11:49:36 15 **Q.** And is that individual Mr. Kistner?

11:49:40 16 **A.** James Kistner, correct.

11:49:42 17 **Q.** And do you see the date that he was
11:49:46 18 charged with this crime?

11:49:49 19 **A.** January 1st, 2017.

11:49:54 20 **Q.** And do you see what he was charged
11:49:56 21 with?

11:49:56 22 **A.** Criminal mischief third, Class C
11:50:00 23 felony.

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11:50:01 1 Q. And if you would like I could give you
11:50:03 2 some time to review the allegations that support
11:50:06 3 that criminal charge. Would you like some time to
11:50:08 4 review that?

11:50:09 5 A. No, I'm good. That would be -- the
11:50:12 6 damage would be in a certain amount.

11:50:14 7 Q. Correct.

11:50:15 8 A. They're saying more than \$250.

11:50:28 9 Q. Now, do you see in the first line where
11:50:32 10 there's the allegations that support the criminal
11:50:37 11 charge where it says intent to damage?

11:50:38 12 A. With intent to damage the property of
11:50:42 13 another person, city of Buffalo Police Department
11:50:44 14 and having no right to do so nor any reasonable
11:50:46 15 ground to believe that he had such right did damage
11:50:47 16 the property. To wit; driver's side mirror.

11:50:51 17 Q. But you do see the part where it says
11:50:53 18 intent to damage?

11:50:54 19 A. Correct.

11:50:55 20 Q. Now, to the best of your recollection,
11:50:57 21 is that one of the elements to support a criminal
11:51:00 22 mischief charge?

11:51:01 23 A. It could be. For different charges I

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11:51:05 1 don't know -- I haven't read the statute in a long
11:51:09 2 time, but it could be recklessly damage or -- I'm
11:51:09 3 not sure. But intent was definitely one of the --
11:51:13 4 one of them.

11:51:14 5 **Q.** Okay. Now, based on what you just saw
11:51:16 6 on that video, do you think that Mr. Kistner had an
11:51:20 7 intent to damage the police vehicle?

8 **A.** What I saw --

11:51:21 9 **MS. HUGGINS:** Form.

11:51:22 10 **THE WITNESS:** What I saw in the video is
11:51:23 11 inconclusive. I can't tell what took place. I can
11:51:25 12 tell you they did come in contact.

13 **BY MR. DAVENPORT:**

11:51:28 14 **Q.** Now, if you had been reviewing this
11:51:32 15 during internal affairs process, if officers had
11:51:34 16 brought felony charges against that individual for
11:51:38 17 criminal mischief, would that result in a sustained
11:51:41 18 or not sustained finding?

11:51:43 19 **MS. HUGGINS:** Form.

11:51:43 20 **THE WITNESS:** I cannot tell you that. I
11:51:46 21 don't know what the investigation -- I don't have
11:51:48 22 the opinion of the investigators. I don't have
11:51:50 23 witness statements. I don't have officer

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11:51:52 1 statements.

11:51:53 2 I don't -- couldn't tell you what it would
11:51:55 3 be or what it wouldn't be. I did not review this
11:51:58 4 case, to my knowledge. Therefore, I really
11:52:01 5 shouldn't give an opinion on something I don't
6 know.

7 **BY MR. DAVENPORT:**

11:52:04 8 **Q.** Now, during that internal affairs
11:52:06 9 review process, would you expect that there would
11:52:08 10 be statements from the officers as to what formed
11:52:11 11 their belief that Mr. Kistner had an intent to
11:52:15 12 damage the vehicle?

11:52:16 13 **A.** Yes.

11:52:17 14 **Q.** And if the officer driving the vehicle
11:52:19 15 said that she did not see Mr. Kistner before he
11:52:26 16 struck the vehicle and another officer had seen
11:52:27 17 what had taken place, would you then ask questions
11:52:30 18 about what that other officer saw and how he saw
11:52:34 19 what he claims to have seen?

11:52:36 20 **MS. HUGGINS:** Form.

11:52:36 21 **THE WITNESS:** Again, I'd have to review all
11:52:38 22 the evidence that would be presented to me. So
11:52:41 23 there's no way I can tell you what I would have

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11:52:44 1 done, could have done or should have done. But I
11:52:46 2 would have to see the total body of evidence.

3 **BY MR. DAVENPORT:**

11:52:49 4 **Q.** Did you see how prior to Mr. Kistner
11:52:51 5 and the car coming in contact, there was another
11:52:55 6 police vehicle that was driving away?

11:52:57 7 **A.** Correct.

11:52:58 8 **Q.** Now, in this case, the one officer who
11:53:02 9 said that he saw the entire thing was sitting in
11:53:05 10 the passenger's seat of that vehicle. And that he
11:53:07 11 looked through the driver's side mirror and saw
11:53:10 12 Mr. Kistner throw himself at the police vehicle.
11:53:13 13 Do you find that to be a creditable statement?

11:53:16 14 **MS. HUGGINS:** Form. Calls for speculation.

11:53:18 15 **THE WITNESS:** Again, I don't have the
11:53:19 16 statements that the officers made. I don't have
11:53:21 17 the full investigation in front of me. So I don't
11:53:26 18 believe I can render an opinion.

19 **BY MR. DAVENPORT:**

11:53:29 20 **Q.** Mr. Derenda, have you ever sat in the
11:53:32 21 passenger's seat of a vehicle before?

11:53:32 22 **A.** I'm sure I have.

11:53:33 23 **Q.** And have you ever looked through the

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11:53:35 1 passenger's -- the driver's side mirror?

11:53:38 2 A. Driver's side mirror?

11:53:40 3 Q. Yes.

11:53:41 4 A. Not to my recollection.

11:53:43 5 Q. Are you familiar with the general
11:53:49 6 layout of mirrors on a vehicle?

11:53:51 7 A. Yes.

11:53:51 8 Q. And if a mirror is correctly placed on
11:53:54 9 the driver's side, what would the person in the
11:53:59 10 passenger seat be able to see?

11:54:01 11 A. I don't know.

11:54:02 12 Q. What would the individual in the
11:54:05 13 driver's side be able to see?

11:54:06 14 A. What's behind, whatever is in the
11:54:08 15 mirror, however he had it set. Again, for me to
11:54:11 16 speculate what they seen or didn't see, I don't
11:54:16 17 know.

11:54:16 18 Q. Have you ever looked in the mirror,
11:54:20 19 whether that be the passenger's side mirror or the
11:54:23 20 rear view mirror as a vehicle is driving away?

11:54:28 21 A. As a vehicle is driving away?

11:54:29 22 Q. As the vehicle that you're sitting in
11:54:31 23 is driving away?

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11:54:32 1 **A.** Have I ever looked in the mirror while
11:54:34 2 something -- while I'm driving away? I'm sure I
11:54:36 3 have.

11:54:36 4 **Q.** As a passenger have you ever done that?

11:54:39 5 **A.** I can't say I have or haven't.

11:54:42 6 **Q.** Even if you'd done that as a driver,
11:54:44 7 you had sat in a vehicle and looked in mirrors as
11:54:47 8 you were driving away?

11:54:49 9 **A.** There may be a reason to look in the
11:54:52 10 mirror as you're pulling way. But, again, probably
11:54:54 11 have, but can't say when or why. If you're pulling
11:54:59 12 away from something you'll look in the mirror to
11:55:00 13 make sure nothing is coming out or whatever.

11:55:04 14 But I'm sure there's been a reason why I've
11:55:06 15 looked, I just can't tell you why.

11:55:08 16 **Q.** Now, when the vehicle is driving away,
11:55:12 17 is images that you are seeing in the mirror easier
11:55:16 18 or harder to see as you drive further and further
11:55:19 19 away from whatever that image is?

11:55:21 20 **MS. HUGGINS:** Form.

11:55:22 21 **THE WITNESS:** Obviously, the image would get
11:55:24 22 smaller and smaller the further you get.

23 **BY MR. DAVENPORT:**

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11:55:26 1 Q. And it would be more difficult to see
11:55:28 2 what that image is and be able to identify it?

11:55:32 3 MS. HUGGINS: Form.

11:55:33 4 THE WITNESS: I believe so.

5 BY MR. DAVENPORT:

11:55:34 6 Q. And if an individual is sitting in the
11:55:37 7 passenger's seat and looking in the rearview
11:55:41 8 mirror, as the car is driving further and further
11:55:44 9 away it would be more difficult for the officer to
11:55:46 10 identify what is taking place between the other
11:55:50 11 police vehicle and the citizen?

11:55:51 12 MS. HUGGINS: Form.

11:55:52 13 THE WITNESS: Again, the further away you
11:55:53 14 get the less you're going to be able to see. I
11:55:56 15 don't know the circumstances. So I really can't
11:55:59 16 tell you what they seen or didn't see or how they
11:56:02 17 seen it.

11:56:02 18 But yes, the further away you get the less
11:56:06 19 ability you have to see.

20 BY MR. DAVENPORT:

11:56:10 21 Q. Now, I'm going to show you some more
11:56:14 22 parts of this video. But before I do so, an
11:56:19 23 individual has just, in a police vehicle, have just

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11:56:21 1 come in contact with each other.

11:56:23 2 Would you expect there to be some sort of a
11:56:27 3 health assessment of the individual who was just
11:56:30 4 struck?

11:56:30 5 **A.** Again, I don't know the circumstances.
11:56:33 6 I don't know if there was damage to the vehicle. I
11:56:36 7 don't know if the person that came in contact with
11:56:39 8 the vehicle claimed injury. I don't know any of
11:56:41 9 that.

11:56:42 10 So sometimes I would say yes, sometimes no,
11:56:47 11 depending on the circumstances. And as I said,
11:56:49 12 when you look at this video from where I sit and
11:56:50 13 what I know, it's inconclusive. If he was injured,
11:56:53 14 not injured, damage, no damage, you can't tell.

11:56:56 15 **Q.** If the individual told the officers
11:56:59 16 that his head was hurting, would you expect there
11:57:03 17 to be some sort of a health assessment?

11:57:05 18 **MS. HUGGINS:** Form.

11:57:05 19 **THE WITNESS:** If he says he was injured, was
11:57:08 20 he arrested at the time? What was going on?
11:57:12 21 Again, different circumstances. Is he saying --
11:57:16 22 the officers apparently say in their complaint that
11:57:19 23 he threw himself on the vehicle.

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11:57:20 1 If he's claiming injury at that point, he'd
11:57:24 2 have a right to get checked out medically at that
11:57:27 3 point. And should have been, if that's the case.
11:57:29 4 But, again, I wasn't there.

5 **BY MR. DAVENPORT:**

11:57:31 6 **Q.** Now, would that health assessment be
11:57:35 7 done by the officers at the scene? Or would there
11:57:37 8 be other ambulance or emergency personnel that
11:57:39 9 would go?

11:57:40 10 **A.** If somebody is claiming an injury, they
11:57:41 11 have a right to go see medical personnel or
11:57:45 12 somebody respond.

13 **BY MR. DAVENPORT:**

11:57:47 14 **Q.** Would -- would you expect the officers
11:57:51 15 to have an ambulance arrive at the scene for
11:57:55 16 somebody whose head is hurting?

11:57:56 17 **A.** Sometimes, yes. Sometimes, no.
11:58:00 18 Depending -- again, circumstances. Does his
11:58:02 19 head -- does he have a headache. It -- depending
11:58:03 20 on the circumstances. Again, I could say yes or
11:58:05 21 no, either way.

11:58:07 22 **Q.** Now, in circumstances where you would
11:58:09 23 say no, what circumstances would those be where you

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11:58:14 1 wouldn't expect an ambulance to go to the scene?

11:58:16 2 **A.** I don't know what was communicated. I
11:58:18 3 don't know what was said. I don't know what the
11:58:20 4 officers are saying he said. If he's saying I'm
11:58:23 5 injured and he's under arrest then they should have
11:58:26 6 either A, called an ambulance or taken him to the
11:58:29 7 hospital.

11:58:30 8 **MS. HUGGINS:** Form as to last question.

9 **BY MR. DAVENPORT:**

11:58:32 10 **Q.** If one of the individuals who witnessed
11:58:35 11 what took place called for an ambulance, would the
11:58:40 12 officers have the ability to cancel the ambulance?

11:58:44 13 **MS. HUGGINS:** Form.

11:58:45 14 **THE WITNESS:** Could they have canceled the
11:58:48 15 ambulance? I'm sure they could have told them that
11:58:52 16 they don't need an ambulance. They'll take him to
11:58:55 17 the hospital. Or again, I don't know the
18 circumstances.

19 **BY MR. DAVENPORT:**

11:58:57 20 **Q.** Now, would it be proper for an officer
11:58:59 21 to cancel an ambulance if an individual said that
11:59:02 22 his head hurt and there was another individual who
11:59:06 23 called an ambulance to arrive?

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11:59:09 1 **MS. HUGGINS:** Form.

11:59:09 2 **THE WITNESS:** Again, I don't know the
11:59:10 3 circumstances. I don't know what the officers knew
11:59:11 4 or didn't know at the time. If he's injured and
11:59:14 5 he's under arrest, he's saying he's injured, needs
11:59:19 6 medical attention. Then they should have let the
11:59:22 7 ambulance come at that -- if they didn't.

11:59:25 8 I don't know if they canceled it or didn't.
11:59:26 9 Or they should have taken him for observation to a
11:59:30 10 medical facility.

11 **BY MR. DAVENPORT:**

11:59:32 12 **Q.** Now, if you were sitting in an internal
11:59:35 13 affairs review process and the officer told you
11:59:37 14 that he canceled the ambulance because the officers
11:59:39 15 could get the individual to ECMC faster than the
11:59:44 16 ambulance. Would that be a proper reason to cancel
11:59:47 17 an ambulance?

11:59:48 18 **MS. HUGGINS:** Form.

11:59:48 19 **THE WITNESS:** Depending on the
11:59:49 20 circumstances. If there -- if he said I have a
11:59:51 21 headache, if they could get him there faster he's
11:59:54 22 in custody, if he's able to walk and has no issues
11:59:59 23 there's no serious medical issues that they see or

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12:00:03 1 he's claiming. Then I wouldn't have a problem with
12:00:05 2 them taking him to the hospital.

12:00:08 3 But I don't know if they took him to the
12:00:10 4 hospital. I don't know what he's claiming. I
12:00:11 5 don't know what they seen. But in some cases yes.
12:00:15 6 In some cases no. Again, depending on the
12:00:18 7 circumstances.

12:00:18 8 You're putting me in something that I'm not
12:00:21 9 there or not aware of all the circumstances. So I
12:00:22 10 can't give you a definitive answer.

11 **BY MR. DAVENPORT:**

12:00:25 12 **Q.** Would that excuse be appropriate if the
12:00:27 13 officers took 25 minutes between the initial
12:00:30 14 collision and actually transporting the individual
12:00:33 15 to ECMC?

16 **MS. HUGGINS:** Form.

12:00:35 17 **THE WITNESS:** Again, depending on the
12:00:37 18 circumstances. I don't know the extent of injuries
12:00:39 19 being claimed or extent of injuries. I don't know.
12:00:43 20 That would be a judgment call.

12:00:46 21 **BY MR. DAVENPORT:**

12:00:46 22 **Q.** Now, if the individual claimed that he
12:00:49 23 had a head injury and the officers performed no

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12:00:52 1 physical assessment whatsoever and did not know
12:00:54 2 what his injuries were and sat at the scene for
12:00:58 3 25 minutes without transporting that individual to
12:01:00 4 ECMC, would that be a problem?

12:01:02 5 **MS. HUGGINS:** Form.

12:01:03 6 **THE WITNESS:** If there was a significant
12:01:05 7 injury and -- then the ambulance should have come
12:01:08 8 and taken care of him. And they shouldn't have
12:01:11 9 canceled the ambulance.

12:01:12 10 Again, I don't know what they thought. What
12:01:13 11 they seen or what they knew at the time to make
12:01:16 12 that judgment. It would be -- I would have to be
12:01:19 13 there. I would have to be the one assessing what's
12:01:22 14 going on.

12:01:22 15 If he wants to go to the hospital, he's
12:01:24 16 claiming injury, then they should have taken him
12:01:26 17 there. If it was bad enough that they shouldn't
12:01:30 18 have waited around 25 minutes, they should have let
12:01:33 19 the ambulance come and assess the situation.

20 But again, I don't know all the
12:01:37 21 circumstances. So for me to comment on what they
12:01:39 22 did or didn't do, I don't know the circumstances.

23 **BY MR. DAVENPORT:**

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12:01:41 1 Q. But then another thing that took place
12:01:44 2 during this case the officers actually canceled
12:01:47 3 ambulances not just for the location where the
12:01:50 4 incident took place, but multiple locations on
12:01:58 5 Schmarbeck Avenue.

12:01:58 6 There were five or six house numbers that
12:02:01 7 they canceled all the ambulances for. Is that a
12:02:03 8 proper --

12:02:03 9 A. I don't understand what you're saying.
12:02:04 10 More people called an ambulance than one?

12:02:07 11 Q. No, there were no ambulances that were
12:02:10 12 called. However, the officers proactively canceled
12:02:15 13 all ambulances that may have been called from
12:02:16 14 multiple locations on Schmarbeck Avenue. Some
12:02:20 15 individuals had no affiliation whatsoever with the
12:02:23 16 Kistner case and collision.

12:02:25 17 MS. HUGGINS: Form. I'm sorry. You're
12:02:27 18 talking about other dates?

12:02:30 19 MR. DAVENPORT: No, on January 1st of 2019.

12:02:30 20 THE WITNESS: So on this date, they got on
12:02:32 21 the radio, from what you're telling me. They said
12:02:34 22 cancel all ambulances, we're going to take him to
12:02:38 23 the hospital?

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1 **BY MR. DAVENPORT:**

12:02:38 2 **Q.** So what they -- what they said was,
12:02:40 3 cancel all ambulances for 24 Schmarbeck,
12:02:46 4 28 Schmarbeck, 33 Schmarbeck, 37 Schmarbeck. And
12:02:46 5 they canceled all of those ambulances not knowing
12:02:50 6 where Mr. Kistner or where calls for ambulances
12:02:54 7 were coming from.

12:02:55 8 Is that a proper police procedure technique
12:02:58 9 to use?

12:02:59 10 **MS. HUGGINS:** Form.

12:02:59 11 **THE WITNESS:** Again, if you're looking at --
12:02:59 12 I'm looking at what appears to be vacant lots. So
12:03:03 13 maybe they didn't know what address it exactly sat
12:03:07 14 at. I don't know how they canceled the ambulance.
12:03:10 15 I don't know what they said. If they were
12:03:12 16 transporting to the hospital. I don't know if
12:03:15 17 there were multiple ambulances called from
12:03:16 18 different sources.

12:03:18 19 But apparently, they canceled the ambulance
12:03:22 20 to transport the individual to the hospital on
12:03:23 21 their own. And could it be justified? Yes. Could
12:03:26 22 it be wrong? Yes. Depending on the circumstances,
12:03:30 23 which I'm not aware of.

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12:03:32 1 I'm not -- I don't know what they knew or
12:03:33 2 what they thought. So for me to make a judgment or
12:03:37 3 what they did or didn't do, it wouldn't be right.

4 **BY MR. DAVENPORT:**

12:03:43 5 **Q.** So I'm going to play -- we'll replay
12:03:45 6 the first 10 seconds and then I'm going to ask
12:03:48 7 questions about what took place afterwards.

12:03:55 8 **A.** Okay.

12:04:00 9 **MS. HUGGINS:** And for the written record,
12:04:03 10 you're resuming the video at 10 seconds.

12:04:09 11 **MR. DAVENPORT:** Correct. Well, for the
12:04:11 12 record I resumed the video from 0 seconds. My
12:04:15 13 questions will pertain to what took place after
12:04:19 14 10 seconds.

12:04:26 15 **MS. HUGGINS:** And Chad, just so you know.
12:04:27 16 Due to the screen, I can't see the timestamps on
12:04:31 17 the bottom. That's also for my purpose now, I
18 can't see them.

19 **MR. DAVENPORT:** Okay. I understand.

12:04:32 20 **MS. HUGGINS:** If you don't mind repeating
12:04:34 21 them out loud.

22 **MR. DAVENPORT:** Understood.

23 **BY MR. DAVENPORT:**

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12:04:37 1 **Q.** So we are at currently 11 seconds in
12:04:41 2 the video. Do you agree that collision has been
12:04:45 3 made between the police vehicle and Mr. Kistner?

12:04:49 4 **A.** Contact has been made, correct.

12:04:50 5 **Q.** Okay. For the other police vehicle
12:04:53 6 that was previously in the screen, do you agree
12:04:53 7 that it's outside of the screen at this point?

12:04:55 8 **A.** It is.

12:04:56 9 **Q.** Okay. Making a visual estimate, what
12:05:00 10 would you say the distance is between the front of
12:05:05 11 the police vehicle that is still in the screen and
12:05:05 12 the end of the screen?

12:05:07 13 **MS. HUGGINS:** Form.

12:05:07 14 **THE WITNESS:** I can't tell. Maybe --
12:05:12 15 talking maybe about two house lengths. Maybe one
12:05:17 16 and half length of a house.

17 **BY MR. DAVENPORT:**

12:05:20 18 **Q.** Okay.

12:05:23 19 **A.** Width of a house. Excuse me.

12:05:25 20 **Q.** So one and a half to two lengths of the
21 houses?

12:05:26 22 **A.** Of the width. Yeah, it appears to be.

12:05:27 23 **Q.** Okay. Now, at this point do you see

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12:05:34 1 another individual walking into the screen?

12:05:36 2 **A.** I do.

12:05:38 3 **Q.** I want you to focus on that individual.

12:06:07 4 Has that individual now left the screen at

12:06:10 5 44 seconds in this video?

12:06:12 6 **A.** Yes.

12:06:12 7 **Q.** And during that time that he could be

12:06:14 8 seen in the video, did he take or make any

12:06:18 9 threatening movements? Or take any threatening

12:06:20 10 actions towards any of the officers?

12:06:22 11 **MS. HUGGINS:** Form.

12:06:22 12 **THE WITNESS:** Inconclusive. I don't know

12:06:24 13 what he was saying. He walked up, walked back. I

12:06:28 14 can't tell what he did. I don't know what he

12:06:31 15 motioned. I don't know what he said. I don't

16 know.

17 **BY MR. DAVENPORT:**

12:06:34 18 **Q.** Based on what you see in the video

12:06:36 19 because the video does not have any audio. Was

12:06:39 20 there any action that that individual took that was

12:06:43 21 threatening to any of the officers?

12:06:45 22 **A.** Not that I can see from the video.

12:06:47 23 It's inconclusive, his actions.

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12:06:49 1 **MS. HUGGINS:** Form.

12:06:50 2 **THE WITNESS:** I can't tell you what he did
12:06:52 3 or didn't do.

4 **BY MR. DAVENPORT:**

12:06:54 5 **Q.** So I'm going to go back to 11 seconds.
12:07:11 6 I just want you to focus this time on the officers.

12:07:36 7 We're now at 39 seconds in the video. Have you
12:07:40 8 seen the driver of the vehicle get out of her car.

12:07:43 9 **A.** I don't believe so.

10 **Q.** Okay.

12:07:45 11 **A.** I was paying attention to the officer
12:07:47 12 walking around and the two officers walking up.

12:07:49 13 **Q.** Okay. Who were the first officers that
12:07:52 14 arrived at where the citizen -- pedestrian was down
12:07:57 15 on the ground?

12:07:59 16 **A.** It appears the first officer was the
12:08:02 17 officer that got out of the passenger's side. The
12:08:05 18 other two walked up.

12:08:06 19 **Q.** Okay. Now, what would a physical
12:08:13 20 assessment of somebody who's claiming a head injury
12:08:16 21 look like by the officers? What process would they
12:08:19 22 go through?

12:08:20 23 **A.** Again, I can't see the individual --

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12:08:22 1 the complainant in the video. If he's claiming an
12:08:26 2 injury, that he's hurt, can't move. Again, could
12:08:28 3 be a variety of responses based on what they see in
12:08:33 4 front of them.

12:08:34 5 And through this video I don't know what
12:08:36 6 they're seeing. I don't know what they're hearing.

12:08:39 7 **Q.** Okay. I just want to be clear. Not --
12:08:41 8 I don't want to know what you see in the video. I
12:08:42 9 just want to know as an officer or somebody's
12:08:45 10 claiming a head injury, what would that physical
12:08:48 11 process look like for a health assessment?

12:08:50 12 **A.** For a health assessment? Again, case
12:08:54 13 by case. What you see in front of you dictates
12:08:55 14 your actions.

12:08:57 15 If you have somebody laying on the ground
12:09:00 16 with their head split open, you're going to call
12:09:02 17 for an ambulance and you're not going to move them.

12:09:03 18 If you have a guy that says I hit my head
12:09:05 19 now, I have a headache and he's getting up and
12:09:08 20 moving around and he wants to go see a doctor, you
12:09:11 21 may or may not wait for an ambulance.

12:09:14 22 Again, depending on the severity of the
12:09:18 23 injury or your perception of the assessment of --

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12:09:20 1 the severity of the injury. Again, it could vary
12:09:23 2 by each situation. I'm not there. I'm not -- I
12:09:26 3 can't tell you what they're seeing or not seeing.
12:09:29 4 Or what they're hearing.

12:09:31 5 Q. Now, if an individual is claiming a
12:09:33 6 head injury and officers have not performed a
12:09:36 7 physical assessment to assess that head injury,
12:09:42 8 would it be appropriate for the officers to pick
12:09:42 9 that person up off the ground?

12:09:44 10 MS. HUGGINS: Form.

12:09:45 11 THE WITNESS: Again, the scenario, I don't
12:09:47 12 know what the officers are hearing or saying. If
12:09:50 13 he's saying I have a headache. Again, depending on
12:09:53 14 what they're seeing in front of them. I don't
12:09:56 15 know.

12:09:58 16 It's an assessment or judgment made right
12:10:01 17 there and then. There's times you would not move
12:10:04 18 somebody with a head injury, correct. I don't know
12:10:06 19 what they seen or what they thought or what they
12:10:09 20 heard. So I can't make an assessment on their
21 actions.

22 BY MR. DAVENPORT:

12:10:12 23 Q. If the officers did not know the

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12:10:15 1 severity of the individual's head injury that he
12:10:17 2 was claiming, would it be appropriate for them to
12:10:19 3 pick him up off the ground?

12:10:21 4 **A.** If they believed he didn't have an
12:10:26 5 injury, then it would be appropriate to pick him up
6 off the ground.

7 **Q.** But if they didn't know?

8 **A.** If there was --

12:10:26 9 **MS. HUGGINS:** Form as to the last question.
12:10:30 10 Sorry. It' a form objection. You can answer.

12:10:30 11 **THE WITNESS:** If there was an injury they
12:10:32 12 could see and it was being relayed to them, there
12:10:35 13 might be times where it would be very inappropriate
12:10:38 14 for them to move him or pick him off the ground.

12:10:41 15 Again, from what I'm seeing I can't give you
12:10:44 16 my opinion.

17 **BY MR. DAVENPORT:**

12:10:47 18 **Q.** Are the officers, are they provided any
12:10:49 19 medical training during their training academy?

12:10:53 20 **A.** They do go through first aid training.

12:10:57 21 **Q.** And how often do they go through first
12:11:00 22 aid training?

12:11:00 23 **A.** I went through it in the academy and I

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12:11:02 1 don't believe I had a follow up after.

12:11:06 2 Q. And what kinds of things do you learn
12:11:09 3 during that first aid training?

12:11:11 4 A. Just when you should move a person or
12:11:14 5 not move a person. You learn when somebody is
12:11:17 6 choking. All different basic -- basic first --
12:11:20 7 first aid.

12:11:24 8 And 20 something years later that class my
12:11:26 9 wife was -- my then girlfriend, now my wife, was
12:11:29 10 choking on a sandwich and that class saved her
12:11:33 11 life. Because I remembered what I was taught in
12:11:35 12 the academy.

12:11:37 13 I had to go back and check the book to make
12:11:40 14 sure I did it right, but in the end I did.

12:11:44 15 Q. And all officers would go through
12:11:47 16 similar types of training?

12:11:47 17 A. First aid in the academy. There may be
12:11:50 18 some additional training afterwards. I know that
12:11:52 19 we had different training with Narcan. We had
12:11:57 20 different training with tourniquets. And there may
12:11:58 21 have been, depending on different positions they
12:12:02 22 were in, they could have received additional
12:12:03 23 training.

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12:12:04 1 I don't know what they -- I'm telling you
12:12:06 2 what I -- my experience has been that I was trained
12:12:08 3 in the academy. And I don't ever remember taking a
12:12:11 4 first aid course after that.

12:12:12 5 Q. So to the best of your knowledge, all
12:12:15 6 officers would receive some sort of training on
12:12:19 7 when an individual has a head injury, when to pick
12:12:23 8 that person up off the ground?

12:12:26 9 A. I believe, there would be some basic
12:12:28 10 training pertaining to that. Moving people in
12:12:31 11 general. Head injury, whatever, but there would be
12:12:36 12 some basic first aid -- a basic first aid course.

12:12:38 13 Q. And one of the things that the officers
12:12:40 14 would learn is, if they do not know the severity of
12:12:43 15 the head injury they should not pick an individual
12:12:45 16 up off the ground?

12:12:47 17 MS. HUGGINS: Form.

12:12:47 18 THE WITNESS: I don't know exactly what they
12:12:49 19 would have been trained on. That would be for the
12:12:53 20 review the manuals from the academy and/or whatever
12:12:56 21 training records they were trained on.

22 BY MR. DAVENPORT:

12:12:59 23 Q. If you learned that an officer picked

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12:13:01 1 an individual up off the ground with a head injury
12:13:04 2 and the officer did not know the severity of the
12:13:08 3 head injury, would that be an issue that would
12:13:11 4 require discipline?

12:13:13 5 **MS. HUGGINS:** Form.

12:13:13 6 **THE WITNESS:** Again, depending on the
12:13:16 7 circumstances, what they knew, what they observed,
12:13:18 8 what they were told. Yes, maybe and yes -- no,
12:13:22 9 maybe. Depending on the circumstances.

12:13:25 10 Each individual case, I would need to know
12:13:27 11 detailed, what took place, what they were seeing,
12:13:30 12 what were the extent of the injuries. The
12:13:34 13 individual cases.

12:13:36 14 Again, I don't know what they knew or didn't
12:13:38 15 know. So I really can't comment. Yes, sometimes.
12:13:42 16 No, sometimes. Depending on each -- each case
12:13:45 17 would probably be an individual assessment.

18 **BY MR. DAVENPORT:**

12:13:50 19 **Q.** Would it be appropriate for officers to
12:13:53 20 put an individual with a head injury in the back of
12:13:58 21 their police vehicle and not check on that
12:13:59 22 individual while he's sitting in the back?

12:14:02 23 **MS. HUGGINS:** Form.

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12:14:02 1 **THE WITNESS:** Again, depending on the
12:14:04 2 severity of the injury. Or what they believed or
12:14:06 3 knew about an injury.

12:14:07 4 If there was a head injury that needed
12:14:10 5 medical treatment to sit him in a car I would say
12:14:14 6 get him -- if it was -- if he needed immediate
12:14:17 7 treatment they should have waited for the
12:14:19 8 ambulance.

12:14:20 9 Or if he didn't need immediate treatment
12:14:22 10 they could have taken him, if it was something that
12:14:25 11 wasn't an emergency circumstance.

12:14:27 12 Again, circumstances will dictate their
12:14:29 13 response or should dictate their response. Could
12:14:32 14 they be wrong in what they did? Yes. Could they
12:14:34 15 be right in what they did? Yes.

16

BY MR. DAVENPORT:

12:14:37 17 **Q.** Would it about inappropriate for an
12:14:40 18 officer to say to an individual down on the ground,
12:14:42 19 if you don't get up I'm going to arrest you?

12:14:45 20 **MS. HUGGINS:** Form.

12:14:45 21 **THE WITNESS:** I don't know why they would
12:14:49 22 say that. Would it be inappropriate if somebody's
12:14:53 23 on the ground, get up or I'm going to arrest you.

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12:14:54 1 I would say that's inappropriate.

2 **BY MR. DAVENPORT:**

12:15:41 3 **Q.** We're now at a minute and 17 seconds in
12:15:45 4 this video. Does it appear that Mr. Kistner has
12:15:49 5 been handcuffed at this point?

12:15:50 6 **A.** It appears so.

12:15:50 7 **Q.** So he would also be detained?

12:15:53 8 **MS. HUGGINS:** Form.

12:15:53 9 **THE WITNESS:** Handcuffed, he would be
12:15:54 10 detained, correct.

11 **BY MR. DAVENPORT:**

12:16:03 12 **Q.** And do you see the individual who is
12:16:05 13 standing on the sidewalk?

12:16:06 14 **A.** Yes, I do.

12:16:07 15 **Q.** Now, I understand that we don't have
12:16:11 16 audio. But based on what you see in this video,
12:16:14 17 focusing on him, I want you to tell me if you see
12:16:18 18 him do anything threatening to any of the officers.

12:16:22 19 **MS. HUGGINS:** Form.

12:16:23 20 **THE WITNESS:** He appears to be on a
12:16:25 21 telephone.

12:16:28 22 **MR. DAVENPORT:** And we're at a minute 25 in
12:16:29 23 the video.

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12:16:30 1 **THE WITNESS:** I don't know what he's saying.
12:16:33 2 I don't know if he's making threats. At this point
12:16:37 3 from the video, inconclusive to what exactly he's
4 doing.

5 **BY MR. DAVENPORT:**

12:16:41 6 **Q.** Does it appear that one of the officers
12:16:43 7 has turned towards the individual?

12:16:46 8 **A.** It has.

12:16:47 9 **Q.** And did it appear that he is now
12:16:49 10 speaking or engaging with the individual?

12:16:52 11 **A.** It's what it appears to be.

12:16:53 12 **Q.** And it appears that the individual is
12:16:55 13 still on his cell phone at this time?

12:16:59 14 **MS. HUGGINS:** Form.

12:16:59 15 **THE WITNESS:** It appears he's on his cell
12:17:01 16 phone. Again, that's what it looks like.

17 **BY MR. DAVENPORT:**

12:17:06 18 **Q.** Now, at a minute 35, just before, do
12:17:10 19 you see the individual take steps away from the
12:17:13 20 officer?

12:17:13 21 **A.** The individual backed up as the officer
12:17:16 22 approached.

12:17:17 23 **Q.** So the officer also simultaneously had

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12:17:20 1 approached the individual?

12:17:22 2 **A.** Correct.

12:17:25 3 **Q.** Did you see the individual stick his
12:17:28 4 arm up away from the officer?

12:17:29 5 **A.** I seen his arm come up, correct.

12:17:33 6 **Q.** And then walk away from the officer?

12:17:35 7 **A.** That's what it appears to be, yes.

12:17:37 8 **Q.** Does it appear that the individual
12:17:38 9 wants to engage or discuss anything with this
12:17:41 10 officer?

12:17:42 11 **MS. HUGGINS:** Form.

12:17:42 12 **THE WITNESS:** From the video I can't at this
12:17:45 13 point tell you what was going on.

14 **BY MR. DAVENPORT:**

12:17:48 15 **Q.** Based on his physical actions that he
12:17:50 16 took, does it appear that he wants to speak to this
17 officer?

12:17:54 18 **MS. HUGGINS:** Form.

12:17:54 19 **THE WITNESS:** He backed away from the
12:17:56 20 officer and I seen his arm go up. And at this
12:17:57 21 point I can't tell you where he's at or what
12:18:00 22 he's -- obviously, can't tell you what he's saying.

23 **BY MR. DAVENPORT:**

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12:18:20 1 Q. Now, if that individual had been on his
12:18:24 2 cell phone, would it be appropriate for the
12:18:26 3 officers to take the cell phone away from him?

12:18:29 4 MS. HUGGINS: Form.

12:18:29 5 THE WITNESS: Yes and no, depending on the
12:18:33 6 circumstances. I can't tell you what the
12:18:34 7 circumstances are from this video.

8 BY MR. DAVENPORT:

12:18:37 9 Q. Do you recall a policy that would have
12:18:39 10 been an issue during your tenure on cell phone use
12:18:45 11 by citizens?

12:18:45 12 A. They have a right to videotape
12:18:47 13 officers, if that's what you're talking about. I
12:18:49 14 made that very clear.

12:18:52 15 Q. Do citizens also have a right to speak
12:18:54 16 on the cell phone the same way that they would have
12:18:55 17 a right to video an officer?

12:18:56 18 A. Obviously.

12:18:58 19 Q. So that policy would pertain equally to
12:19:02 20 speaking on a cell phone or videotaping with a cell
21 phone?

22 A. If somebody had --

12:19:07 23 MS. HUGGINS: Form.

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12:19:07 1 **THE WITNESS:** -- a citizen has a right to
12:19:10 2 videotape with their cell phone and/or speak on
12:19:12 3 their cell phone, correct.

4 **BY MR. DAVENPORT:**

12:19:14 5 **Q.** And an officer must have a sufficient
12:19:17 6 reason to take a cell phone away from an
12:19:19 7 individual?

12:19:19 8 **A.** An officer would need a reason to take
12:19:22 9 that phone away, correct. Other than him using the
12:19:23 10 phone to video or talk on, correct. I -- there
12:19:27 11 must -- I don't -- I can't tell you what was going
12:19:28 12 on from what you're showing me.

12:19:30 13 **Q.** Does it appear that the individual was
12:19:33 14 dragged out into the street by the officer or led
12:19:37 15 out into the street by the officer?

12:19:40 16 **A.** The individual appeared to be walked
12:19:42 17 out towards the street. I don't know what took
12:19:44 18 place prior to that.

12:19:45 19 **Q.** Did the officer have his hands on the
12:19:48 20 individual?

12:19:48 21 **A.** It appeared so. At least was guiding
12:19:52 22 him along. You'll have to replay it and let me see
12:19:56 23 it again.

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12:19:56 1 Q. Sure.

12:20:09 2 A. It appears he's holding onto his coat
12:20:13 3 and guiding him towards the center of the street
12:20:17 4 where you see him now.

12:20:19 5 Q. And did you see the part where the
12:20:21 6 individual had his cell phone taken from him?

12:20:23 7 A. I couldn't tell you that.

8 Q. Okay.

12:20:25 9 A. Seemed like he was struggling with
12:20:27 10 something.

12:20:28 11 Q. Okay. We have a different view that we
12:20:31 12 can show you.

12:20:35 13 Did you see any sort of a physical
12:20:37 14 interaction between the officers and the
12:20:40 15 individual?

12:20:40 16 A. It appeared to be a bit of a struggle
12:20:44 17 starting.

12:20:45 18 Q. Did it appear that the struggle between
12:20:48 19 the officer and the citizen was caused by the
12:20:50 20 officers? Or the citizen?

12:20:52 21 MS. HUGGINS: Form.

12:20:52 22 THE WITNESS: I can't tell from the video.

23 BY MR. DAVENPORT:

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12:21:02 1 Q. Okay. Now, at this point with an
12:21:10 2 individual being dragged out into the street or led
12:21:13 3 out into the street by the officers, would the
12:21:16 4 officers then be performing a pat down afterwards?

12:21:21 5 MS. HUGGINS: Form.

12:21:22 6 THE WITNESS: Again, I don't -- I can't see
12:21:25 7 what he's doing or not doing. Would it be
12:21:28 8 appropriate to pat somebody down? Yes and no,
12:21:31 9 depending on the circumstances.

10 BY MR. DAVENPORT:

12:21:33 11 Q. Would it be appropriate for them to pat
12:21:36 12 him down if he wasn't being detained?

12:21:38 13 A. For the safety of the officers and the
12:21:41 14 individual, at times it would be appropriate.

12:21:45 15 Q. If he had been detained, he would be
16 patted down?

12:21:49 17 MS. HUGGINS: Form.

12:21:49 18 THE WITNESS: He would be searched, correct.
12:21:51 19 But prior to that if you're in close contact with
12:21:54 20 somebody, you think there's a threat, you might pat
12:21:57 21 him down to make sure he does not have a weapon for
12:22:01 22 the safety of the officer and the individual.

23 BY MR. DAVENPORT:

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12:22:02 1 Q. Now, I understand that we don't have
12:22:05 2 audio, but based on the physical interactions that
12:22:07 3 you saw in the video, is there anything threatening
12:22:09 4 to any of the officers by that individual?

12:22:12 5 MS. HUGGINS: Form.

12:22:12 6 THE WITNESS: From the video I've seen I
12:22:15 7 can't tell you what exactly is going on. It
12:22:17 8 appears the officer led the individual out into the
12:22:21 9 street. It appeared to be a little bit of a
10 struggle.

12:22:24 11 And that's about all I can tell at this
12:22:26 12 point. So I can't tell you what was appropriate or
12:22:30 13 not, based on what I'm seeing.

14 BY MR. DAVENPORT:

12:22:32 15 Q. Prior to the struggle and prior to the
12:22:34 16 individual being led out into the street by the
12:22:37 17 officers, was there any threatening action that
12:22:40 18 that individual took?

12:22:41 19 A. Not that I could see or know about.

12:23:08 20 Q. Now, if that individual had been
12:23:11 21 calling for an ambulance for the individual that
12:23:14 22 was just hit by the police vehicle, would that be
12:23:17 23 an appropriate reason for officers to take that

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12:23:19 1 individual's cell phone?

12:23:21 2 **MS. HUGGINS:** Form.

12:23:21 3 **THE WITNESS:** He has a right to make a phone
12:23:24 4 call to whoever he wants. Whether it's for an
12:23:26 5 ambulance or anybody else. He has a right to
12:23:28 6 videotape a police officer that would -- it would
12:23:30 7 be appropriate for him to do that.

12:23:32 8 Again, why they would take the phone is very
12:23:35 9 unclear from what I'm seeing.

10 **BY MS. HUGGINS:**

12:23:37 11 **Q.** Would it be inappropriate for the
12:23:38 12 officers to take a cell phone if he was merely
12:23:41 13 using it to call for an ambulance?

12:23:41 14 **A.** If he was calling for an ambulance it's
12:23:44 15 his right to do so. And if that was strictly the
12:23:46 16 only reason then -- then it was inappropriate for
12:23:51 17 them to take the phone.

12:23:53 18 **MS. HUGGINS:** Form as to the last question.

12:23:56 19 **THE WITNESS:** And I say if -- because,
12:23:58 20 again, I don't know the circumstances nor can I
12:24:00 21 tell from what you're showing me.

22 **BY MR. DAVENPORT:**

12:24:02 23 **Q.** Understood. Thank you.

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1 All right. I'm going to load up this new
2 disc. Hopefully, this one goes quicker. We can go
3 off the record for a minute then.

12:24:30 4 **THE VIDEOGRAPHER:** Off the record at 12:24.

12:24:30 5 (Off the record.)

12:26:04 6 **THE VIDEOGRAPHER:** On the record at 12:26.

7 **BY MR. DAVENPORT:**

12:26:11 8 **Q.** Now, I'm showing you what has been
12:26:13 9 marked previously as Exhibit 12. It is called
12:26:17 10 footage two Emerson. And this is another view of
12:26:25 11 what happened on January 1st of 2017.

12:26:39 12 Now, do you see the individual who's not a
12:26:43 13 police officer who just appeared in the screen?

12:26:44 14 **A.** Yes.

12:26:45 15 **Q.** And if I told you that he was the same
12:26:47 16 individual who was on the cell phone from the
12:26:49 17 previous video that you watched, would you have any
12:26:53 18 reason to disagree with what I say?

12:26:53 19 **A.** No, he appears to be.

12:26:55 20 **Q.** Okay. Do you see where his right hand
12:26:57 21 is positioned in the video?

22 **A.** Yes.

23 **Q.** And I can play it a little bit more if

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12:27:00 1 you need me to.

12:27:00 2 **A.** Can you back it up a second?

12:27:07 3 **Q.** Yeah, sure. I'm just going to go back
12:27:09 4 10 seconds, it's easier to do that.

12:27:26 5 Now, do you see where his right hand is
12:27:29 6 positioned?

12:27:30 7 **A.** He appears to have his cell phone.

12:27:33 8 **Q.** Okay. And did you see just before --
12:27:35 9 so we're at a minute and 28 in the video. Did you
12:27:36 10 see just before where he stuck his arm out away
12:27:40 11 from the officer?

12:27:41 12 **A.** Yes.

12:27:41 13 **Q.** And does it appear that he is now
12:27:44 14 walking away from the officers?

12:27:45 15 **A.** It appears -- we have a frozen frame,
12:27:49 16 yes.

12:27:49 17 **Q.** Okay. And does it appear that the
12:27:50 18 officer is walking after him?

12:27:51 19 **A.** Correct.

12:27:56 20 **Q.** Now, we're at a minute and 32 seconds.
12:27:59 21 Did you see the officer grab the individual by the
12:28:02 22 coat or arm?

12:28:02 23 **A.** Correct.

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12:28:04 1 Q. Okay. Now, can you see where his right
12:28:11 2 arm is positioned?

12:28:12 3 A. It appears he still has the phone in
12:28:16 4 his hand.

12:28:16 5 Q. Okay. Does it appear that he is
12:28:17 6 still -- still has the cell phone up near his ear?

12:28:20 7 A. It appears so.

12:28:26 8 Q. Now, I can back it up if you need me
12:28:30 9 to. But did you see the officer take the phone
12:28:34 10 from the individual?

12:28:36 11 A. I see a struggle start. I didn't
12:28:38 12 actually see it being taken.

12:28:42 13 Q. Okay. I'm going to replay it. Did you
12:28:54 14 see where the officer left arm reached across the
12:28:57 15 individual?

12:28:58 16 A. It appears to be such, correct.

12:29:00 17 Q. Okay. Did it appear that the officer
12:29:02 18 took the cell phone from the individual?

12:29:04 19 A. From what I see, he reached his hand
12:29:07 20 up, I don't -- if you're telling me he took the
12:29:09 21 cell phone I'll agree with you.

22 Q. Okay.

12:29:11 23 A. But I can't tell what exactly took

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12:29:14 1 place from the video you're showing me.

12:29:17 2 Q. Okay. Now, did you see the struggle
12:29:22 3 take place between the two officers?

12:29:24 4 A. Yes, I did.

12:29:25 5 Q. Did you see anything before that that
12:29:28 6 would have led you to believe that there should
12:29:30 7 have been a struggle between the officers and the
8 individual?

12:29:32 9 MS. HUGGINS: Form.

12:29:32 10 THE WITNESS: I can't tell you what the
12:29:33 11 individual's actions were or what he was saying.
12:29:36 12 There's -- so I can't tell you if their actions
12:29:40 13 were warranted or not.

14 BY MR. DAVENPORT:

12:29:41 15 Q. Okay. So I understand that we don't
12:29:42 16 have audio. But based off of what you see for
12:29:46 17 physical interactions, did you see any threatening
12:29:49 18 behavior from the individual that would lead you to
12:29:51 19 believe that the officers need to use force to
20 control him?

12:29:54 21 A. From the video you're showing me. It's
12:29:56 22 inconclusive. I can't tell you why they used
12:29:58 23 force. Whether they should have or shouldn't have,

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12:30:00 1 I can't tell from the video. I don't know what the
12:30:03 2 individual was saying. I don't know the
12:30:07 3 circumstances.

12:30:07 4 They appear to lead him out. It seemed like
12:30:10 5 a struggle maybe when he took the phone from him,
12:30:13 6 if that's what he was doing. But I can't tell you
12:30:16 7 the circumstances of what took place or why they
12:30:17 8 took place.

12:30:18 9 **MS. HUGGINS:** Form as to the last question.

10 **BY MR. DAVENPORT:**

12:30:20 11 **Q.** Does it appear that the officers did
12:30:22 12 use force with that individual?

12:30:23 13 **A.** They appeared --

12:30:24 14 **MS. HUGGINS:** Form.

12:30:25 15 **THE WITNESS:** -- appeared to bring him out
12:30:27 16 into the street, guide him out. And they appear to
12:30:31 17 reach -- and you said he took a phone out of his
12:30:34 18 hand, I believe, that was the struggle then that
12:30:35 19 was -- yes, that was force to take the phone.

20 **BY MR. DAVENPORT:**

12:30:38 21 **Q.** And would there be a form that officers
12:30:40 22 would be required to fill out for using force on an
12:30:44 23 individual?

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12:30:44 1 **A.** If it's physical force -- taking out --
12:30:48 2 depending on -- there's a force when you're
12:30:49 3 fighting with somebody. This appeared just to be a
12:30:54 4 bit of a struggle. I don't know exactly what took
12:30:56 5 place.

12:30:57 6 So again, there could be a form that had to
12:31:02 7 be filled out and maybe no. Because the use of
12:31:03 8 force when you're fighting with an individual to
12:31:06 9 control him. They don't appear to be fighting with
12:31:09 10 him, they appear to be struggling. Not the
12:31:13 11 officers, but the individual seems to be struggling
12:31:17 12 with the officers a bit, correct.

12:31:18 13 **Q.** And would it be a judgment call by the
12:31:22 14 officers if it was a struggle or whether they were
12:31:23 15 in a fight to control?

12:31:24 16 **A.** It didn't appear to be a fight to
12:31:26 17 control, it appeared to be a momentary struggle.
12:31:29 18 Or the guy pulling back.

12:31:31 19 I don't think it appears -- and I'll take
12:31:32 20 your word for it that he reached and grabbed the
12:31:35 21 phone. I don't know why he would have done that.
12:31:38 22 I don't know the circumstances.

12:31:39 23 **Q.** And just to be clear. What would be

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12:31:46 1 the difference between a fight and a struggle? Is
12:31:52 2 there a defined term for either one of those?

12:31:53 3 **A.** If he started the fight with the
12:31:55 4 officers, they would have to use the use of force.
5 If they had to wrestle him to the ground, handcuff
12:31:59 6 him and place him under arrest that would be a
12:32:02 7 definite use of force.

12:32:05 8 This might be on the borderline. He
12:32:08 9 struggled and pulled away from the officers. I
12:32:11 10 don't know how much force they used. If it would
12:32:13 11 rise to that level.

12:32:14 12 **Q.** Would there be another form besides the
12:32:17 13 fighting use of form -- use of force form that an
12:32:22 14 individual -- that an officer would fill out if it
12:32:24 15 was just a struggle?

12:32:26 16 **A.** It didn't look like much of a struggle.
12:32:30 17 It appeared to be a two second. I don't believe
12:32:33 18 there would be another form. It would be a use of
12:32:33 19 force or not.

12:32:34 20 And from the video you were showing me, I
12:32:35 21 don't know if it rises to the level of use of
12:32:38 22 force.

12:32:38 23 **Q.** And then if a use of force form is

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12:32:41 1 filled out, who is that reviewed by?

12:32:43 2 **A.** It goes to internal affairs.

12:32:44 3 **Q.** Would the lieutenants or any other
12:32:47 4 supervisors within the districts review that
12:32:50 5 paperwork?

12:32:50 6 **A.** I'm sure they would review it and pass
12:32:54 7 it up, sign off on it.

12:32:55 8 **Q.** And that would just be their one
12:32:58 9 responsibility to sign off on the form?

12:32:59 10 **A.** And pass is forward, correct.

12:33:01 11 **Q.** And then internal affairs would be
12:33:04 12 responsible --

12:33:04 13 **A.** For doing the investigation, correct.
12:33:05 14 Or the lieutenant might do an initial investigation
12:33:08 15 on it and pass up any comments. May or may not.

12:33:11 16 **Q.** Okay.

12:33:14 17 **A.** But that would -- but that form would
12:33:16 18 have to be initiated by the officers.

12:33:25 19 **Q.** Okay. Now, up to the point where this
12:34:02 20 officer is walking away at two minutes and
12:34:05 21 13 seconds, has there been a pat down of this
12:34:09 22 individual?

12:34:10 23 **A.** It appeared that something like that

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12:34:12 1 was going on. I can't -- I couldn't tell. It
12:34:14 2 looked like the -- the individual was patting
12:34:16 3 himself down.

12:34:17 4 If you go back -- if you go back and show it
12:34:20 5 appears that something was taken from his hand.
12:34:22 6 And it appears that there might have been some type
12:34:26 7 of pat down.

12:34:27 8 Do you want to go back about that 30
12:34:29 9 seconds.

12:34:30 10 Q. Well, I agree with you that the
12:34:31 11 individual was patting himself down. But did you
12:34:34 12 see the officers pat down the individual?

12:34:36 13 A. It didn't appear that way.

12:34:38 14 Q. Okay. Now, if the officers perceive
12:34:41 15 this individual as a threat, would the officers be
12:34:44 16 required to perform the pat down?

12:34:47 17 MS. HUGGINS: Form.

12:34:47 18 THE WITNESS: If I was the officer for my
12:34:50 19 safety I would have -- if I thought it was a threat
12:34:53 20 I would have performed a pat down.

21 BY MR. DAVENPORT:

12:34:54 22 Q. And is that what officers are trained
12:34:56 23 to do? If they perceive somebody to be a threat

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12:35:01 1 they did it themselves, pat that individual down?

12:35:03 2 **MR. DAVENPORT:** Form.

12:35:03 3 **THE WITNESS:** They're trained that in close
4 proximity -- again, depending on circumstances or
12:35:08 5 what's in their head and what they believe.

12:35:09 6 If I would have thought that he was a threat
12:35:11 7 to me I would have patted him down.

8 **BY MR. DAVENPORT:**

12:35:20 9 **Q.** Are officers trained to allow
12:35:23 10 individuals to pat themselves down?

12:35:26 11 **A.** He patted himself down. I don't know
12:35:29 12 how to -- again, if he wants to pat himself down, I
12:35:33 13 don't know why you would stop him. If you see him
12:35:36 14 reaching for something that would be a whole nother
12:35:38 15 story.

12:35:38 16 **Q.** But, I guess, my question is, are
12:35:41 17 officers trained to ever allow individuals to pat
12:35:43 18 themselves down as opposed to an officer pat down?

12:35:46 19 **A.** If the officer thought he was
12:35:49 20 threatened and felt that he had something, he
12:35:52 21 should have patted him down themselves. I don't
12:35:59 22 know what their perception is at that point. If an
12:36:01 23 individual starts patting himself down, okay.

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12:36:04 1 Again, I don't know what the officers --
12:36:05 2 what they perceived. What they're seeing. I don't
12:36:09 3 know. I don't know what's being said. So I can't
12:36:11 4 tell you whether their actions are right or wrong.

12:36:15 5 Q. So I just want to go back to the
12:36:19 6 beginning of the video.

12:36:23 7 A. Okay.

12:36:25 8 Q. Now, we're at 0 seconds of the video.
12:36:30 9 Do you see a police vehicle that is currently in
12:36:32 10 the footage right now?

12:36:33 11 A. Yes.

12:36:33 12 Q. Okay. And do you see another gray
12:36:40 13 sedan that is currently in the view?

12:36:41 14 A. Everything looks gray. But yes, I see
12:36:44 15 another vehicle.

12:36:45 16 Q. Now, did you see this other vehicle
12:36:47 17 from the other view that I previously showed you?

12:36:50 18 A. I believe so. I believe it was. I
12:36:55 19 don't recall.

12:36:55 20 Q. Okay. I'll show that again just for
12:36:58 21 your clarification.

12:37:00 22 A. Okay.

12:37:00 23 Q. But now, watching this video, I just

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12:37:04 1 want you to see and tell me, does it appear that
12:37:09 2 the police vehicle drives outside of the camera
12:37:12 3 view at this time?

12:37:21 4 **A.** It does.

12:37:22 5 **Q.** Okay. Does it appear that the vehicle
12:37:29 6 was moving quickly or slowly through the camera
12:37:33 7 view?

12:37:34 8 **MS. HUGGINS:** Form.

12:37:34 9 **THE WITNESS:** I can't tell from the video.

10 **BY MR. DAVENPORT:**

12:37:38 11 **Q.** Do you see the time stamp that's listed
12:37:41 12 at the top 10:25:36?

12:37:46 13 **A.** Correct.

12:37:47 14 **Q.** And then I want you to watch and tell
12:37:51 15 me when you see the vehicle leave the view of the
12:37:54 16 camera.

12:37:57 17 **A.** Two seconds -- two and a half seconds
12:38:00 18 later?

12:38:00 19 **Q.** Okay. And so that would have been at
12:38:02 20 10:25:39 is where it has left the camera view?

12:38:07 21 **MS. HUGGINS:** Form.

12:38:07 22 **THE WITNESS:** 10:25:39 -- or 38.5 or
12:38:11 23 whatever. Two and a half to three seconds.

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1 **BY MR. DAVENPORT:**

12:38:13 2 **Q.** Okay. And now, I want you to tell me
12:38:15 3 when you next see the police vehicle arrive in this
12:38:19 4 camera view.

12:38:23 5 **A.** Five seconds, six seconds.

12:38:31 6 **Q.** And what would the time have been?

12:38:34 7 **A.** 10:25:44.

12:38:37 8 **Q.** Okay.

12:38:41 9 **MS. HUGGINS:** Form as to the last question.
12:38:43 10 Are you asking time of day? Or the amount of time
11 from the video?

12:38:45 12 **MR. DAVENPORT:** Just the time that's shown
12:38:47 13 on the video.

14 **BY MR. DAVENPORT:**

12:39:02 15 **Q.** Does it appear that the police vehicle
12:39:04 16 is backing up?

12:39:05 17 **A.** Correct.

12:39:06 18 **Q.** Does it appear now that officers are
12:39:08 19 getting out of the vehicle?

12:39:09 20 **A.** Yes.

12:39:10 21 **Q.** What time is that at?

12:39:12 22 **A.** 10:25:48.

23 **MR. DAVENPORT:** I'm going to switch back.

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1 We can go back off the record.

2 **THE VIDEOGRAPHER:** Off the record at 12:39.
3 (Off the record.)

12:41:32 4 **THE VIDEOGRAPHER:** We're back on the record
12:41:34 5 at 12:41.

6 **BY MR. DAVENPORT:**

12:41:39 7 **Q.** So I'm showing you what's been marked
12:41:41 8 previously as Exhibit 11. It's the video that you
12:41:44 9 previously watched. The number is
12:42:02 10 06_20170101102529. We're at two seconds in the
12:42:06 11 video.

12:42:12 12 Now, Dan, do you see that sedan that was in
12:42:16 13 the previous video?

12:42:17 14 **A.** I do not.

12:42:19 15 **Q.** Okay. And do you see in the top part
12:42:22 16 where it says 10:25:31?

12:42:25 17 **A.** Yes.

12:42:26 18 **Q.** I want you to tell me when you see the
12:42:29 19 vehicle what time that is at the time top, what
12:42:32 20 time you see the vehicle leave the camera screen?

21 **MS. HUGGINS:** Just for clarification, you
12:42:39 22 mean the SUV?

12:42:43 23 **MR. DAVENPORT:** Correct. The SUV, the

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12:42:46 1 police SUV that is currently moving forward.

2 **THE WITNESS:** 36 and a half, 37. 10:25:36,
3 37.

12:42:50 4 **BY MR. DAVENPORT:**

12:42:56 5 **Q.** From your previous testimony it was
12:43:00 6 10:25:37 where you first saw the police vehicle
12:43:06 7 within the camera screen?

12:43:10 8 **MS. HUGGINS:** Form.

9 **THE WITNESS:** You'd have to show me again.

12:43:11 10 **MS. HUGGINS:** Are you asking him to compare
12:43:13 11 the two videos and the time stamps?

12 **MR. DAVENPORT:** Correct.

13 **MS. HUGGINS:** He's not a custodian and he
12:43:17 14 didn't -- of this video system.

12:43:20 15 **MR. DAVENPORT:** I'm just asking if he saw
12:43:21 16 and what he previously testified to. I'm not
12:43:24 17 asking him to say that it's right. I'm not asking
12:43:27 18 him to say that it's accurate. I'm just asking him
12:43:28 19 what he sees. That's all I'm asking.

12:43:29 20 **MS. HUGGINS:** He can testify to the time
12:43:32 21 stamps, they're on there. They obviously speak for
22 themselves.

23 **MR. DAVENPORT:** Correct.

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12:43:33 1 **MS. HUGGINS:** But I would object to
12:43:34 2 testimony comparing the time stamps or an attempt
12:43:39 3 to authenticate.

12:43:41 4 **MR. DAVENPORT:** Not attempting to
12:43:43 5 authenticate. I'm just asking what he sees.

12:43:45 6 **MS. HUGGINS:** Then it's a form objection to
12:43:46 7 your question.

12:43:48 8 **MR. DAVENPORT:** Okay.

12:43:48 9 **THE WITNESS:** I'd have to see the other
12:43:51 10 video again to give you the time stamp. If that's
12:43:53 11 what it was what I said, then that's what it was.

12 **BY MR. DAVENPORT:**

12:43:55 13 **Q.** Yeah, and that's okay. We have the
12:43:56 14 transcript. So I don't need you to verify what you
12:44:00 15 said before.

12:44:17 16 Up until -- is 10:25:53 the first time you
12:44:22 17 see officers appear on the screen?

12:44:24 18 **A.** 52, 53, yes.

12:44:26 19 **Q.** And you don't see the police vehicle at
12:44:28 20 all on that screen?

12:44:29 21 **A.** I do not.

12:44:30 22 **Q.** Okay. Thank you. I'm going to show
12:47:10 23 you what's been marked as Exhibit 4A. Now, Dan, do

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12:47:22 1 you recognize what this document is generally?

12:47:25 2 A. A call log.

12:47:29 3 Q. And do you see what the date is for
12:47:34 4 this complaint summary report?

12:47:36 5 A. The report date is March 14th, 2019.
12:47:43 6 Well, actually no, the report date -- if you look
12:47:47 7 at the report it's also showing 1/1/2017.

12:47:52 8 Q. Okay. Thank you. That's more so the
12:47:53 9 date that I'm concerned with is January 1st of
12:47:57 10 2017.

12:47:58 11 Now, in reviewing the complaint summary
12:48:02 12 report, do you see where it was first reported to
12:48:05 13 dispatch that a male was hit by a police car?

12:48:16 14 A. Male hit by police car 10:55:42.

15 Q. Okay.

12:48:20 16 A. AID -- ADI notified, ambulance.

12:48:26 17 Q. And then was the location changed to
12:48:29 18 ECMC at any point on this complaint summary report?

12:48:37 19 A. Location changed, ECMC.

12:48:48 20 Q. What time would that have taken place
12:48:51 21 at?

12:48:51 22 A. 11:22:34.

12:48:54 23 Q. So it appears that it would have been

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12:48:56 1 27 minutes approximately between the time that the
12:49:00 2 male was hit by the car and the officers started to
12:49:03 3 go to ECMC?

12:49:05 4 **MS. HUGGINS:** Form.

12:49:05 5 **THE WITNESS:** It says location changed to
12:49:07 6 ECMC. It would appear that it was that time, but I
12:49:10 7 don't when they left or if they did it on route.

8 **BY MR. DAVENPORT:**

12:49:14 9 **Q.** Okay. Now, I'm showing you what has
12:49:19 10 also been marked as Exhibit 11. This is the fourth
12:49:23 11 video in that sequence. It is listed as
12:49:32 12 06_20170101105233.

12:49:38 13 Now, do you see the time stamp in the upper
12:49:41 14 part of the video?

12:49:44 15 **A.** Yes, 10:52:36.

12:49:47 16 **Q.** And we were previously talking about
12:49:50 17 times that would have been around 10:25 when we
12:49:55 18 were speaking about when officers vehicles were in
12:49:58 19 the scene?

12:49:58 20 **A.** I believe so.

12:49:59 21 **Q.** So there would be according to the
12:50:03 22 video and the recording system on the video there
12:50:07 23 would have been approximately 30 minutes or

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12:50:10 1 30 minutes on the security camera's time that would
12:50:12 2 have elapsed while these officers are still viewed
12:50:17 3 in the video?

4 **MS. HUGGINS:** Form. That -- that's what was
12:50:19 5 the heart of my objection before. That he's not a
12:50:23 6 system -- custodian of. We you don't know if that
12:50:24 7 time is accurately recorded or not.

12:50:27 8 **MR. DAVENPORT:** Right. But based on what he
12:50:29 9 is seeing in the video there would have been
12:50:33 10 30 minutes on this video system that would have
11 elapsed.

12:50:37 12 **MS. HUGGINS:** No, that's the same form
12:50:39 13 objection. That's the same objection to this. The
12:50:41 14 time stamp is obviously on there and it speaks for
12:50:44 15 itself.

12:50:44 16 But as we know in this case it doesn't match
12:50:47 17 up with any of the actual timeframes when you
12:50:50 18 compare all of the discs. And so I don't know how
12:50:54 19 he can provide competent testimony as to that.

20 **BY MR. DAVENPORT:**

12:50:57 21 **Q.** Okay. Dan, would the 30 minutes that
12:51:01 22 appears to have elapsed on the security camera
12:51:05 23 comport with what you see on the complaint summary

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12:51:06 1 reports where 27 minutes have elapsed?

12:51:10 2 **A.** Close to it.

12:51:10 3 **Q.** Okay. Do you see that officers are
12:51:13 4 currently standing out in the street?

12:51:15 5 **A.** I see officers. I don't know which
12:51:17 6 officers. And I don't know what car the suspect or
12:51:23 7 the complainant was transported in.

8 **Q.** Okay.

12:51:27 9 **A.** I believe he was put in the other car,
12:51:29 10 so I don't know where he is right now in this
12:51:31 11 video.

12:51:31 12 **Q.** Okay. If an individual is claiming a
12:51:34 13 head injury, would it be appropriate for the
12:51:39 14 officers to stand out in the middle of the street
12:51:41 15 after canceling an ambulance service and not drive
12:51:43 16 that individual to ECMC?

12:51:43 17 **MS. HUGGINS:** Form.

12:51:43 18 **THE WITNESS:** Again, I don't have all the
19 facts or knowledge of why they're standing in the
12:51:44 20 street. And why they didn't take him to the
12:51:49 21 hospital immediately. Or why they canceled the
12:51:52 22 ambulance. I don't know what their thought process
12:51:53 23 was.

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1 **BY MR. DAVENPORT:**

12:51:54 2 **Q.** Would there be any reason for those
12:51:57 3 officers to still be standing in the street at this
12:51:59 4 point?

12:52:00 5 **MS. HUGGINS:** Form.

12:52:00 6 **THE WITNESS:** Again, I don't know what --
12:52:02 7 what they're thinking. What they seen. What
12:52:04 8 they're doing. I don't have an explanation.

9 **BY MR. DAVENPORT:**

12:52:07 10 **Q.** If the alleged suspect had already been
12:52:11 11 placed into -- had already been arrested and
12:52:16 12 detained and placed in the back of a police
12:52:17 13 vehicle, would there be any reason for those
12:52:20 14 officers to still be at the scene at this point?

12:52:24 15 **MS. HUGGINS:** Form.

12:52:24 16 **THE WITNESS:** Again, I don't know the
12:52:26 17 circumstances of why they're standing in the
18 street. Or what they're doing.

19 **BY MR. DAVENPORT:**

12:52:28 20 **Q.** If the individual is sitting in the
12:52:31 21 back of the police vehicle complaining to officers
12:52:33 22 of a head injury, should the officers be driving
12:52:36 23 him to ECMC at this point?

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12:52:37 1 **MS. HUGGINS:** Form.

12:52:37 2 **THE WITNESS:** If I had a prisoner in the
12:52:39 3 backseat that was complaining with a head injury, I
12:52:40 4 would be driving him to ECMC at that point. I
12:52:43 5 would, but I don't know what they knew, didn't know
12:52:46 6 or what they seen. Or -- again, I can't comment on
12:52:49 7 what they're doing.

8 **BY MR. DAVENPORT:**

12:52:50 9 **Q.** And what you would do by driving that
12:52:52 10 individual to ECMC, would that be proper procedure
12:52:55 11 and proper protocol for a police officer?

12:52:58 12 **MS. HUGGINS:** Form.

12:52:58 13 **THE WITNESS:** Again, depending on the
12:53:00 14 circumstance or perception of the injury that he
12:53:04 15 had.

16 **BY MR. DAVENPORT:**

12:53:04 17 **Q.** If you did not know the severity of
12:53:07 18 that individual's head injury, would you drive that
12:53:09 19 individual to ECMC?

12:53:10 20 **MS. HUGGINS:** Form.

12:53:11 21 **THE WITNESS:** If I thought it was a severe
12:53:12 22 injury I would wait for the ambulance.

23 **BY MR. DAVENPORT:**

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12:53:17 1 Q. If you decided to drive that individual
12:53:18 2 to ECMC, would you prolong driving him to ECMC? Or
12:53:24 3 would you drive as quickly as possible?

4 MS. HUGGINS: Form.

12:53:27 5 THE WITNESS: Again, depending on the
12:53:29 6 circumstances of what I perceived. If I perceived
12:53:32 7 he was injured I would have taken him to ECMC.

12:53:34 8 Again, I don't know the circumstances of
12:53:37 9 what they know or don't know at that time based on
12:53:40 10 the video you're showing me.

11 BY MR. DAVENPORT:

12:53:44 12 Q. If there was an internal affairs
12:53:47 13 complaint that came to you claiming that an
12:53:49 14 individual sat in the back of a police vehicle for
12:53:52 15 nearly a half an hour with a head injury and
12:53:54 16 officers did not drive him to ECMC, would that
17 result in discipline for the officers?

12:53:58 18 MS. HUGGINS: Form.

12:53:59 19 THE WITNESS: It could.

20 BY MR. DAVENPORT:

12:54:00 21 Q. Should it?

12:54:01 22 A. Depending on the circumstances. What
12:54:03 23 they knew, didn't know. What they were told by the

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1 complainant or suspect.

12:54:09 2 Again, depending on what their perception,
12:54:13 3 what was going on. If he had an injury, if it was
12:54:18 4 a severe injury, as I said, I would have called an
5 ambulance.

12:54:21 6 If he's injured just says he has a headache
12:54:23 7 and you're taking him, I would have taken to the
12:54:26 8 hospital on route if he was under arrest.

12:54:32 9 I don't know what they're doing and I can't
12:54:33 10 comment on what they're or why they're doing it.
12:54:33 11 There's times that yes, it could result in
12:54:36 12 discipline based on the facts of the case. Every
12:54:38 13 case is individual, as you know, based on the
12:54:42 14 facts.

12:54:42 15 Q. Even if there wasn't an individual
12:54:46 16 sitting in the back of the police vehicle, would it
12:54:48 17 be appropriate for officers to stand out in the
18 middle of the street during their patrol duties?

12:54:54 19 MS. HUGGINS: Form.

12:54:55 20 THE WITNESS: Could be. Again, I don't know
12:54:57 21 what they're doing or why they're doing it.

22 BY MR. DAVENPORT:

12:55:47 23 Q. Now, Dan, are you familiar with

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12:55:49 1 Officer Schultz?

12:55:51 2 A. I know the name.

12:55:53 3 Q. Karl Schultz?

12:55:54 4 A. I know the name.

12:55:56 5 Q. Is he somebody that you knew during
12:55:59 6 your tenure as the Buffalo Commissioner?

12:56:02 7 A. Know personally? No.

12:56:05 8 Q. Is he somebody that you ever worked
12:56:07 9 with as a police commissioner?

12:56:08 10 A. No.

12:56:09 11 Q. And how did you know Karl Schultz?

12:56:11 12 A. I've heard the name. I believe, there
12:56:14 13 were other internal affairs cases with him.

12:56:17 14 Q. Okay. What was the nature of those
12:56:21 15 internal affairs cases?

12:56:22 16 A. I don't recall. There was one where
12:56:25 17 there was -- involved with a shooting. It was
12:56:26 18 investigated by the District Attorney's Office.

12:56:34 19 Q. Does this appear to be Karl Schultz?

12:56:38 20 MS. HUGGINS: Form. Stop. If you're going
12:56:40 21 to put -- if you're going to show him this it needs
12:56:41 22 to be marked as an exhibit.

23 MR. DAVENPORT: Okay. That's fine.

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12:56:44 1 **MS. HUGGINS:** If you want to go off of the
12:56:46 2 record to do so.

3 **MR. DAVENPORT:** Yeah, we can do that.

4 **THE VIDEOGRAPHER:** Off the record at 12:56.
5 (Off the record.)

12:59:36 6 **THE VIDEOGRAPHER:** Back on the record at
12:59:37 7 12:59.

8 **The following was marked for Identification:**

9 **EXH. 39** **USB flash drive that**
10 **contains the video**
11 **deposition of Karl Schultz,**
12 **three segments.**

12:59:39 13 **MR. DAVENPORT:** So we would like to mark as
12:59:43 14 Exhibit 39 a USB flash drive that contains the
12:59:47 15 video deposition of Karl Schultz.

12:59:51 16 It's broken down into three sections --
12:59:56 17 three segments labeled Schultz_A, Schultz_B and
13:00:02 18 Schultz_C. This deposition took place in February
13:00:04 19 of 2020 and we are currently showing footage from
13:00:08 20 that deposition to the witness Dan Derenda.

21 **BY MR. DAVENPORT:**

13:00:37 22 **Q.** Now, Dan, I asked you right before we
13:00:41 23 went off the record briefly, do you recognize this

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13:00:42 1 individual who you see in the video?

13:00:45 2 **A.** Appears to be Karl Schultz.

13:00:47 3 **Q.** Okay. And before today, have you ever
13:00:50 4 seen Karl Schultz in person?

13:00:51 5 **A.** I'm sure I have.

13:00:54 6 **Q.** Okay. And how do you know that this is
13:00:56 7 Karl Schultz?

13:00:57 8 **A.** Like I said, I've come across him
13:01:00 9 before in the course of my duties. So I'm -- I
13:01:06 10 know he had some other internal affairs cases as I
13:01:08 11 stated.

13:01:09 12 And, I believe, one was an officer involved
13:01:11 13 shooting that went to the District Attorney's Office.

13:01:14 14 **Q.** Okay. And you were commissioner at
13:01:16 15 that time, correct?

13:01:17 16 **A.** Yes.

13:01:18 17 **Q.** Now, I want you -- so from the video,
13:01:25 18 Karl Schultz and his partner Kyle Moriarty were in
13:01:30 19 the vehicle just in front where the collision had
13:01:34 20 occurred between Lauren McDermott and
13:01:36 21 Officer Velez's vehicle.

22 **MS. HUGGINS:** Form.

23 **BY MR. DAVENPORT:**

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13:01:38 1 Q. Just that way you have context for what
13:01:41 2 Karl Schultz will be testifying to.

13:01:45 3 MS. HUGGINS: Form. You're playing
13:01:54 4 Schultz_A, at what time?

13:01:57 5 MR. DAVENPORT: A minute 43 and it is
13:01:58 6 currently at nine -- excuse me, nine seconds.

7 BY MS. HUGGINS: Is it a minute or an hour?

8 MR. DAVENPORT: It's an -- I'm sorry. It's
13:02:09 9 an hour and 43 minutes and 10 seconds.

10 (Video of Officer Schultz playing.)

11 BY MR. DAVENPORT:

13:04:24 12 Q. Now, Dan, would you agree after
13:04:26 13 watching that segment of Karl Schultz's vehicle,
13:04:29 14 the only viewpoint that he had was through the
13:04:31 15 driver's side mirror of the police vehicle that he
13:04:35 16 was a passenger in?

17 MS. HUGGINS: Form.

13:04:37 18 THE WITNESS: That's what he stated.

13:04:39 19 BY MR. DAVENPORT:

13:04:39 20 Q. Okay. Do you find that credible, that
13:04:42 21 an officer would be able to see an interaction like
13:04:46 22 that through the driver's side mirror while sitting
13:04:50 23 in the passenger's seat?

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13:04:51 1 **MS. HUGGINS:** Form. That's not an
13:04:53 2 appropriate question.

3 **BY MR. DAVENPORT:**

13:04:56 4 **Q.** Well, do you find that to be something
13:04:58 5 that an officer would be able to perceive if he was
13:05:02 6 sitting in the passenger's seat through a driver's
13:05:05 7 side mirror?

13:05:08 8 **MS. HUGGINS:** Form. You can answer.

13:05:09 9 **THE WITNESS:** I don't know.

10 **BY MR. DAVENPORT:**

13:05:13 11 **Q.** In watching this video, if
13:05:15 12 Officer Schultz, as we have learned throughout the
13:05:19 13 course of this litigation, was the only officer who
13:05:23 14 purportedly saw the collision between Mr. Kistner
13:05:25 15 and the police vehicle.

13:05:27 16 Do you find his viewpoint to be sufficient
13:05:32 17 to bring criminal charges against Mr. Kistner?

13:05:37 18 **MS. HUGGINS:** Form.

13:05:37 19 **THE WITNESS:** Again, I don't know what he --
13:05:40 20 what he saw or how he seen it. He says in the
13:05:43 21 mirror. I don't know what the capability, how far
13:05:47 22 away he was. I just don't know.

13:05:49 23 Again, I can't comment on something if I'm

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13:05:51 1 not -- that I don't know.

2 **BY MR. DAVENPORT:**

13:05:52 3 **Q.** Well, you might recall from watching
13:05:55 4 the previous videos that you watched, that there
13:05:58 5 was at least one and half to two house lengths in
13:06:02 6 between the police vehicle and where the collision
13:06:05 7 took place.

13:06:06 8 **A.** Correct.

13:06:06 9 **Q.** Now, would that be something that an
13:06:09 10 officer would be able to perceive through a tiny
13:06:13 11 driver's side mirror, a collision that takes place
13:06:16 12 between an individual and a police car?

13:06:19 13 **MS. HUGGINS:** Form.

13:06:19 14 **THE WITNESS:** I don't think I can comment on
13:06:21 15 that because I don't know. I don't know the size
13:06:22 16 of the mirror. I don't know how far away he was.
13:06:25 17 I don't know what he seen. So it's very difficult
13:06:29 18 for me to comment on that.

19 **BY MR. DAVENPORT:**

13:06:31 20 **Q.** Well, as a police commissioner, you're
13:06:33 21 familiar with the size of the driver's side and
13:06:35 22 passenger's side mirrors?

13:06:37 23 **A.** An SUV, correct.

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13:06:39 1 **Q.** And you're familiar, generally, with
13:06:40 2 how large the passenger's side and driver's side
13:06:44 3 mirrors typically are?

13:06:46 4 **A.** Correct.

13:06:47 5 **Q.** A very tiny mirror?

13:06:48 6 **A.** I wouldn't say it was a tiny. The
13:06:51 7 trucks are a little bit bigger than cars.

13:06:54 8 On my Jeep Cherokee the mirror is bigger
13:06:55 9 than on the rental I had when they were repairing
13:06:59 10 it. It was small, a big difference.

13:07:02 11 Again, I can't tell you how he seen or what
13:07:04 12 he seen. I don't know how far away. I guess, I'd
13:07:06 13 have to try it myself.

13:07:09 14 **Q.** If the only officer who had viewed the
13:07:12 15 collision between Mr. Kistner and the police
13:07:15 16 vehicle was an officer who was two house lengths
13:07:18 17 away and who only viewed the interaction through a
13:07:21 18 driver's side mirror, would you find that the
13:07:23 19 officers could bring criminal charges based off of
13:07:27 20 what they claimed to have seen?

13:07:29 21 **MS. HUGGINS:** Form.

13:07:30 22 **THE WITNESS:** Again, I would have to see the
13:07:33 23 whole situation laid out in front of me. What they

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13:07:35 1 seen. What, how, why they did what they did,
13:07:37 2 period. What the officer -- other officers seen,
13:07:41 3 didn't see.

13:07:42 4 Again, for me to make a judgment on what
13:07:45 5 he's saying there or his ability to see in the
13:07:46 6 mirror that he says, I can't answer that. Is it
13:07:50 7 possible? Yes. Is it possible he's wrong? Yes.

13:07:53 8 Again, I hate to keep giving you both
13:07:55 9 answers, but from what you're showing me I can't
10 give you a definitive.

11 **BY MR. DAVENPORT:**

13:07:59 12 **Q.** Now, during that entire testimony that
13:08:01 13 you just gave, at any point did he say that
13:08:05 14 Mr. Kistner intentionally threw himself at the
13:08:07 15 police vehicle?

13:08:09 16 **MS. HUGGINS:** Form.

13:08:10 17 **MR. DAVENPORT:** He just listened to it.

13:08:12 18 **MS. HUGGINS:** I know. The problem is that
13:08:12 19 was an hour long deposition. You asked him and --
13:08:14 20 he doesn't know. He wasn't present for the
13:08:17 21 testimony.

13:08:19 22 **MR. DAVENPORT:** Just based off of what he
13:08:20 23 just heard.

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1 **MS. HUGGINS:** Form.

13:08:22 2 **THE WITNESS:** What he said, I believe, was
13:08:23 3 contact.

4 **BY MR. DAVENPORT:**

13:08:24 5 **Q.** But he never said that Mr. Kistner
13:08:28 6 intentionally threw himself at the police vehicle?

13:08:28 7 **A.** Not in the clip you showed me.

13:08:34 8 **Q.** Now, could I actually get -- we can go
9 off the record.

10 (Off the record to reposition camera.)

11 **BY MR. DAVENPORT:**

13:10:12 12 **Q.** So Dan, I just want to go back to the
13:10:16 13 internal affairs process. We've talked about some
13:10:18 14 of the potential outcomes was unfounded, not
13:10:22 15 sustained and sustained.

13:10:24 16 Are there any times where officers will
13:10:28 17 reach a settlement to -- as a disposition for an
13:10:33 18 internal affairs complaint?

13:10:34 19 **A.** Settlement meaning? So basically, if I
13:10:38 20 find it -- I sustain it, I believe, you did it.
13:10:40 21 Here's the penalty I'm offering. They may try to
13:10:44 22 bargain that penalty down with the union prior to
13:10:47 23 going to a hearing.

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13:10:49 1 As I said, sometimes hearings could be a
13:10:51 2 year or two later. So sometimes I would bargain
13:10:56 3 that penalty down if I believed it was appropriate.

13:10:58 4 Or I might start higher knowing that they're
13:11:02 5 going to want to bargain it down to come to where
13:11:05 6 we need to be. But sometimes I wouldn't, sometimes
13:11:08 7 I would.

13:11:08 8 Q. So the settlement would take place
13:11:10 9 after a sustained finding has been made in an
13:11:14 10 internal affairs investigation?

13:11:15 11 A. It would be once it's been sustained at
13:11:21 12 the review and then a formal hearing takes place.
13:11:21 13 I give them an offer.

13:11:22 14 After that the union might come back and
13:11:25 15 say, okay. He'll accept this, otherwise he wants
13:11:29 16 to go to a hearing. So there could be an agreement
13:11:33 17 or a compromise.

13:11:35 18 Q. Would there ever be a settlement that's
13:11:37 19 reached between the officers and you and the police
13:11:40 20 department prior to a disposition being reached?

13:11:45 21 A. A settlement prior to that? No.

13:11:48 22 Q. Okay. Now, are you familiar at all
13:11:52 23 with the document retention cycle for the city of

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13:11:57 1 Buffalo?

13:11:57 2 **A.** I don't know what it is.

13:11:59 3 **Q.** Is there some sort of a document

13:12:04 4 retention cycle that's in place for the city of

13:12:05 5 Buffalo Police Department --

13:12:05 6 **A.** Internal affairs records.

13:12:10 7 **Q.** I'm just going to ask that you wait for
8 me to finish my question.

13:12:10 9 We'll start with internal affairs records.

13:12:12 10 Is there a document retention cycle for internal

13:12:16 11 affairs records?

13:12:16 12 **A.** If there is -- I believe, there is, but
13:12:19 13 I don't know what it is.

13:12:20 14 **Q.** Is there a document retention cycle for
13:12:26 15 general police documents and police reports?

13:12:27 16 **A.** I would imagine there is, but I don't
13:12:29 17 know the timeframe.

13:12:31 18 **Q.** As a police officer, would you dispose
13:12:34 19 of police records that you've maintained for X
13:12:39 20 amount of years?

13:12:40 21 **A.** The department maintains the records.
13:12:43 22 So basically, everything now is on a computer. Or
13:12:46 23 years past when I started, because I'm old, they

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13:12:49 1 were in a little file. But they don't -- no longer
13:12:51 2 do that. So everything is computerized.

13:12:54 3 Q. So it would be up to the department
13:12:57 4 when to dispose of the records?

13:12:58 5 A. Up to the department or by law, if and
13:13:01 6 when, they would dispose of them.

13:13:03 7 Q. And it wouldn't be the individual
13:13:05 8 police officers who would choose when to dispose --

13:13:07 9 A. Correct.

13:13:07 10 Q. -- the records?

13:13:07 11 A. Correct.

13:13:08 12 Q. After officers pass through the police
13:13:20 13 academy, was there a certain district that new
13:13:23 14 trainees are assigned to?

13:13:24 15 A. They get assigned to all districts.
13:13:27 16 They get assigned to -- once they graduate. I
13:13:29 17 don't know if they were -- when they were field
13:13:31 18 training that they were temporarily assigned.

13:13:33 19 But, I believe, once they graduated from the
13:13:36 20 academy they had a right to bid on a district by
13:13:41 21 seniority in the academy. They could go to that
22 district.

23 So they're -- let's say, for example,

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13:13:44 1 there's five openings at A-District, there's 10
13:13:45 2 openings at E-District. First come by seniority to
13:13:50 3 fill those positions.

13:13:52 4 Q. And then how is the seniority
13:13:55 5 determined for the police academy?

13:13:56 6 A. By where they scored on the exam. So
13:13:59 7 if I scored number one in the academy, to get into
13:14:02 8 the academy that's where the seniority, I believe,
13:14:03 9 would take place. One, to whatever number and
13:14:06 10 you'll make your choice that way.

13:14:08 11 Q. And then the officers themselves are
13:14:10 12 the ones who bid for which district they want to be
13:14:15 13 in?

13:14:15 14 A. Correct. And they will put down
13:14:17 15 multiple, first choice, second choice, third
13:14:18 16 choice. So when you come to the opening, oh, who's
13:14:20 17 next? What's he want in for? Oops that's filled,
13:14:23 18 so you go to the next choice, in that manner.

13:14:26 19 Q. During your tenure, were any of the
13:14:32 20 districts more prone to internal affairs complaints
13:14:36 21 than the others?

13:14:36 22 A. Any other districts, specifically? I
13:14:40 23 can't say that to be a fact or not. Busier

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13:14:45 1 districts might have more complaints.

13:14:46 2 Q. Is C-District a busier district?

13:14:49 3 A. It is.

13:14:50 4 Q. Is C-District the busiest district?

13:14:53 5 A. I don't -- by number of calls or type
13:14:56 6 of calls, I think D-District is probably the
7 busiest.

13:15:05 8 Again, I don't know for sure. But
13:15:06 9 A-District is a lot slower than C-District.
13:15:11 10 D-District is always busy.

13:15:12 11 Q. And would the staffing reflect that?
13:15:14 12 Are there more officers in C-District or A-District
13:15:17 13 than there would be or -- excuse me. I'm sorry.
13:15:19 14 Strike that question.

13:15:20 15 Would there be more officers assigned in
13:15:23 16 C-District and E-District than there would be in
13:15:27 17 A-District?

13:15:27 18 A. Potentially, because of the call
13:15:30 19 volume, correct.

13:15:31 20 Q. And approximately how many more
13:15:33 21 officers would be assigned to C-District as
13:15:36 22 compared to A-District?

13:15:38 23 MS. HUGGINS: Form. Just timeframe here.

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Derenda - Davenport - 9/24/2020

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13:15:42 1 **MR. DAVENPORT:** Sure. In January of 2017.

13:15:45 2 **THE WITNESS:** I don't have the answer to
13:15:46 3 that question. But there would have been more at
13:15:48 4 C-District than A. That I know for a fact.

13:15:50 5 **BY MR. DAVENPORT:**

13:15:50 6 **Q.** And that would have about reflected in
13:15:53 7 all shifts?

13:15:54 8 **A.** It would be the number of cars on the
13:15:55 9 street. And again, based on the number of calls.
13:15:58 10 We look at where you need the number -- the most
13:16:00 11 calls for service you need more officers.

13:16:03 12 **Q.** Okay. And then just currently, right
13:16:07 13 now, are you working with any police department?

13:16:09 14 **A.** I am not.

13:16:11 15 **Q.** Have you worked with any police
13:16:13 16 departments since leaving the city of Buffalo?

13:16:16 17 **A.** I have not.

13:16:19 18 **Q.** And do you currently hold employment --

13:16:22 19 **A.** I do.

13:16:23 20 **Q.** And what do you do currently?

13:16:25 21 **A.** Well, when I left the police
13:16:27 22 department, it would be -- for a company called
13:16:28 23 G4S Secure Solutions. It's a security company. I

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13:16:31 1 started out as a general manager,

13:16:34 2 Buffalo/Rochester.

13:16:35 3 And then I found myself as the director of
13:16:38 4 operations for all of New England. And I just got
13:16:42 5 back from that. Now, I'm district manager back to
13:16:43 6 Buffalo/Rochester. But I just got Hartford added
13:16:47 7 on, so.

13:16:47 8 Q. So that's the company that you've
13:16:51 9 worked for since 2015?

13:16:52 10 A. Since I left, correct.

13:16:55 11 MR. DAVENPORT: I think that's it. I'm all
12 set.

13 THE VIDEOGRAPHER: Off the record at 13:16.

14

15 (Deposition concluded at 1:16 p.m.)

16 * * *

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1 I hereby CERTIFY that I have read the
2 foregoing 163 pages, and that except as to those
3 changes (if any) as set forth in an attached errata
4 sheet, they are a true and accurate transcript of
5 the testimony given by me in the above entitled
6 action on September 24, 2020.

7

8

9

DANIEL DERENDA

10

11 Sworn to before me this

12

13 ----- day of -----, 2020.

14

15

16 NOTARY PUBLIC.

17

18

19

20

21

22

23

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1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF ERIE)

4

5 I DO HEREBY CERTIFY as a Notary Public in and
6 for the State of New York, that I did attend and
7 report the foregoing deposition, which was taken
8 down by me in a verbatim manner by means of machine
9 shorthand. Further, that the deposition was then
10 reduced to writing in my presence and under my
11 direction. That the deposition was taken to be
12 used in the foregoing entitled action. That the
13 said deponent, before examination, was duly sworn
14 to testify to the truth, the whole truth and
15 nothing but the truth, relative to said action.

16

17

18

19

Letitia N. Davies

LETITIA N. DAVIES,
Notary Public.

20

21

22

23

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2 **Exhibit** **Description** **Page**

3 EXH. 37 Letter to Mr. Kistner from 42

4 Internal Affairs Division

4 dated August 13, 2020.

5 Corrected Letter to Mr. Kistner from 44

6 from EXH 37 Internal Affairs Division

6 to EXH. 38 dated August 13, 2020.

7 EXH. 39 USB flash drive that 149

8 contains the video

8 deposition of Karl Schultz,

9 three segments.

10

11 *Copy of exhibit 38 supplied to all counsel.

12 Counsel agreed the contents of Exhibit 39

12 (thumb drive) sent to Ms. Huggins.

13

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